The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §§106.2, 106.4, 106.6, 106.8, and 106.50; the repeal of §§106.261 - 106.263; and new §§106.261, 106.263, 106.268, and 106.269. Sections 106.2, 106.4, 106.6, 106.8, 106.50, 106.261, 106.263, 106.268, and 106.269 are adopted *with changes* to the proposed text as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8789) and the repeals of §§106.261 - 106.263 are adopted *without changes*.

The amendments to §§106.2, 106.4, 106.6, and 106.8 are being adopted as revisions to the Texas state implementation plan (SIP) that will be submitted to the United States Environmental Protection Agency (EPA).

In addition, the commission is requesting that the previous version of §106.50, that became effective October 20, 2002, be removed from consideration by EPA as a proposed revision to the SIP. No comments were received on this withdrawal request.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission is in the process of evaluating all permits by rule (PBRs), a multiple-phased process known as the PBR Study. Through the PBR Study, the commission will evaluate general requirements and all PBRs in order to update administrative and technical requirements, streamline the PBR claim process, address unnecessary registration and fee requirements, ensure that air emissions from PBR facilities are protective of human health and welfare, and allow the commission to more effectively focus resources on facilities that significantly contribute air contaminants to the atmosphere. As a

result of Phase 2 of the PBR Study, the commission is adopting amendments to §§106.2, 106.4, 106.6, 106.8, and 106.50 that revise the general requirements for authorization by PBR. The commission is revising emissions limits to meet the intent of the Texas Clean Air Act (TCAA) regarding the authorization of facilities that would not significantly contribute air contaminants to the atmosphere. These revisions include limiting emissions of carbon monoxide (CO) and nitrogen oxides (NO_x) to 100 tons per year (tpy) for each PBR claim, and limiting emissions of hazardous air pollutants (HAPs) to 10 tpy for an individual HAP and 25 tpy for combined HAPs. These changes prohibit the use of PBRs to authorize emissions that would result in a federal designation of "major" and therefore be significant. The commission solicited comments as to whether ethane should require authorization under Chapters 106 and 116. The commission has determined that, except in the case of emissions from municipal solid waste (MSW) landfills, ethane will not require authorization under Chapters 106 and 116. At MSW landfills, the default limit, for purposes of this chapter, is 25 tpy per PBR claim. The commission is also repealing §106.261 and §106.262 and replacing these rules with a new §106.261 that contains updated technical requirements and emission limitations. The changes to §106.261 increase the protectiveness of that PBR.

One of the primary goals of the PBR Study is to verify that PBRs are protective of human health and welfare and recommend rule changes to ensure or improve their continued protectiveness. To achieve this goal, an impacts evaluation is conducted to verify that individual PBR claims will not adversely impact human health and welfare, that is, the emissions will be "protective." Generally, once the protectiveness review is conducted, individual PBR conditions and emission limits are updated to ensure that the requirements of the PBR are protective. The process to determine requirements to

ensure the protectiveness of §106.261 was unlike the process used for other PBRs because §106.261 is general and can be claimed by any facility type. Therefore, PBR requirements and emission limits cannot be tailored based on specific knowledge of facility operations or emission characteristics. The commission's evaluation for §106.261 was conducted to establish appropriate requirements and emission limits that would ensure protectiveness while providing flexibility for claimants and sustaining economic development.

For §106.261, an evaluation was performed to ensure that the maximum ground-level concentrations resulting from facilities authorized by the PBR would meet applicable National Ambient Air Quality Standards (NAAQS), state property line standards, and effects screening level (ESL) guideline concentrations. Unlike standards, ESLs are guideline concentrations derived by the commission's Toxicology Section and used to evaluate ambient air concentrations of constituents. The ESLs are based on data concerning such factors as the potential for a constituent to cause effects on health and vegetation, nuisance odors, or corrosion. If a predicted or measured airborne level of a constituent meets an ESL, adverse health or welfare effects are not expected. Since the ESLs are not ambient air standards, a predicted or measured exceedance of an ESL does not necessarily indicate a problem. For a permit, these exceedances would trigger further review. The additional review accounts for case-by-case factors such as the magnitude and frequency of exceedance, the location of the exceedance, and the likelihood of adverse impacts at the location. Since the commission does not have the option for a case-by-case review of a PBR, a higher level of conservatism is used to develop requirements and emission limits that include the use of an Air Pollutant Watch List (APWL). In general, PBRs cannot be claimed for a facility that would emit a pollutant on the APWL. However, to provide operational

flexibility, yet maintain protectiveness, a PBR could be claimed for a pollutant on the APWL if there would be no net increase in actual emissions already claimed and no exceedance of a state or federal air concentration standard or ESL for that pollutant from the site. The executive director will provide guidelines for this determination that are based on the intraplant trade concept for qualified facilities and the X-factors and modeling procedures developed for use with the new §106.261.

The X-value tables specified in §106.261 are based on air dispersion modeling results predicted by the EPA's SCREEN3 model. The X-value is used in a series of equations to set acceptable emission limits to meet air quality standards and ESL guidelines. The result is emissions from claims of the PBR will not exceed any air quality standard and not adversely affect any person at a nearby receptor.

In addition to the amendments that the commission is adopting related to the PBR Study, the commission is also adopting rules to address maintenance, startup, and shutdown (MSS) emissions and other episodic releases of emissions. Revisions to 30 TAC Chapter 101, Subchapter F, Emission Events and Scheduled Maintenance, Startup, and Shutdown Activities and new source review (NSR) rules, and ongoing implementation of the Federal Operating Permits (FOP or Title V) Program have resulted in considerable interest and inquiries from the regulated community and others regarding what MSS and other episodic emission releases should and can be authorized by an NSR permit or other authorization. In an effort to aid applicants and agency staff, the commission is adopting criteria to determine if and when emissions that are generated outside of production operations should be authorized.

The commission will authorize emissions from normal operations under this chapter and under 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. The commission is concurrently adopting amendments to Chapter 116 in this issue of the *Texas Register*. Normal operations include emissions from production, planned MSS, and certain quantifiable and anticipated (QUAN) emissions that are predictable but unscheduled.

The commission is also issuing a standard permit as an additional mechanism to authorize planned MSS emissions. Notice of this standard permit is also published in this issue of the *Texas Register*. All changes are intended to assist in reducing excess emissions and to improve overall air quality in Texas. In all cases, any authorized portion of normal operations must comply with NAAQS and state emission standards and be protective of public health and welfare. The new rules allow planned MSS operations to be authorized, and are adopted to comply with EPA policies regarding the permitting of planned MSS emissions. These authorized operations include periodic plant turnarounds that can be very extensive facility or plant-wide maintenance events that occur every two to ten years. The rules also allow owners or operators to group the MSS emissions of similar facilities and activities into one authorization. Additionally, the commission has identified certain PBRs that already authorize MSS. These changes are found in the following new sections: §106.263, Temporary Maintenance Facilities and §106.268, Maintenance, Startup, and Shutdown (MSS) Emissions.

The QUAN PBR is one of the mechanisms that implement the commission's desire to permit currently unauthorized emissions where appropriate. These rules do not allow any relaxation of existing permitting levels or requirements that are approved into the SIP, and ensure emissions meet applicable

air quality standards and would not adversely affect any person at a nearby receptor. These changes are found in the new §106.269, Quantifiable, Anticipated (QUAN) Emissions.

The new mechanisms and rules that facilitate the authorization of MSS and QUAN emissions are individually and collectively protective. At existing facilities, these MSS and QUAN emissions are already present, and the authorization of these emissions by PBR and standard permit will not tend to increase actual emissions related to these facilities. New or modified facilities will comply with whatever combination of authorizations that are appropriate, subject to the protective emission limits of the PBR, standard permit, or permit. In addition to the claim-specific PBR emission limits under §106.268, and §106.269 that are based on §106.261, all MSS and QUAN emissions under §§106.263, 106.268, and 106.269 are restricted to site-wide, collective, and cumulative limits established in §106.4(a)(1) - (3). The emission limits of §106.261 (and corresponding uses of §106.268 and §106.269, which reference §106.261) are based on SCREEN3 modeling results using conservative parameters for point and area sources. The MSS standard permit requires an air dispersion modeling analysis to demonstrate that MSS activities meet air quality standards and ESL guidelines. Larger permitted facilities will undergo impact reviews as a result of amendments to their permits. In addition, the commission intends to modify modeling and effects review guidance to ensure that all site-wide emissions, including MSS and QUAN emissions authorized by PBR, standard permit, or permit, will be evaluated periodically.

SECTION BY SECTION DISCUSSION

The commission is adopting administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines.

§106.2 - Applicability.

The commission is amending §106.2 to reference the new definition of normal operations in §116.10, General Definitions, to prescribe the types of emissions that may be authorized under Chapter 106. The definition of normal operations is concurrently adopted in this issue of the *Texas Register* in §116.10(16). Normal operations include emissions from production, MSS, and QUAN. The definition of normal operations excludes emissions resulting from acts of God, accidents, malfunctions, and other releases not consistent with good engineering practices.

§106.4 - Requirements for Permitting by Rule.

Amended §106.4(a) specifies that the new general requirements of §106.4(a) only apply after the effective date of the rule. Facilities or changes authorized prior to the effective date of this amendment will continue to be subject to the general requirements that were in effect at the time the facility was authorized or modified.

Amendments adopted in §106.4(a)(1) include the delineation of the scope of a PBR claim, what emissions should be considered, and the total quantity of emissions that may be authorized. Subsection (a)(1) specifies that a particular PBR claim must include emissions resulting from the construction or changes to any single facility or group of related facilities. The PBR claim must also include any related emissions increases from upstream or downstream facilities affected by the changes or

construction. This amendment codifies commission practices in existence since 1981 and is not anticipated to have a major impact on the regulated community. These changes are necessary to maintain consistency with federal permitting reviews and to ensure that any related emission changes remain insignificant. Additionally, this subsection specifies that PBR claims will be evaluated by the net increase in emissions. This net increase determination is not the same netting process used to determine the applicability of federal permitting as required by 30 TAC §116.150 and §116.160.

To meet the intent of the TCAA regarding the authorization of facilities that would not significantly contribute air contaminants to the atmosphere, the commission is changing to §106.4(a)(1) to reduce the quantity of CO and NO_x emissions that may be authorized under a single PBR claim. The previous restriction on these pollutants was 250 tpy of these pollutants per PBR claim. The revision reduces this amount to 100 tpy. This change is not retroactive and will only affect PBR claims that occur after the effective date of the adopted amendments. Existing PBR claims will maintain their authorization to emit 250 tpy of these pollutants. The commission has adopted this reduction in the quantity of CO and NO_x emissions because PBRs are intended to authorize insignificant quantities of emissions. Although 250 tpy of CO and NO_x may not have been considered significant when this requirement was originally developed, under the current regulatory and permitting structure, 250 tpy of CO and NO_x represent a significant and potentially major quantity of emissions. Under Title V, 100 tpy of any air pollutant constitutes a major source, so the 100 tpy level was selected as a more reasonable quantity. The commission is also adopting a similar revision applicable to HAPs, establishing a limit of 10 tpy for any individual HAP or 25 tpy of combined HAPs. A source is considered major for HAPs under Title V if emissions exceed these levels. PBRs are intended to be used for insignificant sources and a

project resulting in any emissions that exceed the major source definition cannot be considered insignificant.

The final revision to §106.4(a)(1) removes language concerning the exclusion of carbon dioxide, water vapor, nitrogen, methane, hydrogen, and oxygen from the category of air contaminants for purposes of authorizations under this chapter. This change is consistent with the definition of "air contaminant" in §116.10(2) where the commission excludes these compounds, as well as certain inert gases (argon, neon, helium, krypton, and xenon) from the need to obtain any air authorization under Chapter 116. In response to comments, §106.4(a)(1) has been revised to more clearly reference the definition of air contaminant specified in §116.10(2).

The commission is relocating the requirements of the previous §106.4(a)(2), concerning nonattainment new source review (NNSR), to the new §106.4(f)(1). The new §106.4(a)(2) describes how net emissions increases are quantified. Although the netting concept has been retained, in response to numerous comments the commission is not adopting the proposed method for determining emission increases for qualified facilities using projected new emissions compared to the previous allowable emissions. Emission increases at all facilities will be based upon actual emissions, as has been the practice since this chapter was initially adopted. Any additional emission decreases that the commission is asked to consider for the determination of net increases must be actual, and practically and federally enforceable. It is important to note that this rule is only applicable to the determination of "net increase" for purposes of PBR claims and that for prevention of significant deterioration (PSD)

and NNSR applicability, net emissions increases must continue to be reviewed in accordance with Chapter 116.

The commission is relocating the requirements in the previous §106.4(a)(3) concerning PSD to the new §106.4(f)(2). The new §106.4(a)(3) establishes the cumulative limit on PBR emissions at a site. The definition of site is consistent with 30 TAC Chapter 122, Federal Operating Permits Program. Sites that do not have a current permit cannot exceed the limits consistent with §106.4(a)(1). The language clearly identifies by subchapter the types of permits that satisfy this requirement. In response to public comment, the commission is allowing one year from this rule's effective date for this requirement to be effective.

The commission is also revising renumbered §106.4(a)(4) and (5). The new §106.4(a)(5) contains requirements previously located under §106.4(a)(6). The revisions to §106.4(a)(4) and (5) also add the phrase "facility, group of related facilities, and related increases" to maintain consistency with the terminology in §106.4(a)(1).

The commission is also revising renumbered §106.4(a)(6). The new §106.4(a)(6) contains requirements previously located under §106.4(a)(8), concerning allowances for NO_x emissions under Chapter 101, Subchapter H, Division 3, Mass Emissions Cap and Trade Program, and includes a change in phrasing to refer to "facility, group of related facilities, and related increases" for consistency with the terminology in §106.4(a)(1) and other sections.

The commission is transferring the content of the previous §106.4(a)(7) concerning permit-based restrictions on the use of PBRs to the new §106.4(f)(4). The new §106.4(a)(7) will establish a time limit for commencing construction of facilities authorized under a PBR. The time limit will only apply to those PBRs that require registration. The requirements specify that construction must commence within 18 months of confirmation of registration from the commission. The executive director may grant a one-time, 18-month extension upon request. This requirement is intended to make the construction time lines for PBRs consistent with the construction time lines for permitting under Chapter 116 and to ensure that applicants do not submit PBR registrations for purely speculative purposes. In response to comments, the commission has modified §106.4(a)(7) to specify that any request for an extension must be submitted in writing. Also in response to comments, the commission is adding the clarifying phrase "prior to construction" to indicate only those PBRs requiring registration prior to construction are subject to the 18-month time limit to begin construction.

The new §106.4(b) includes a list of PBRs that already authorize MSS emissions. Facilities using these PBRs may not authorize additional MSS emissions under §106.268. Previously lettered subsections (b) and (c) are relettered as (d) and (e), respectively.

Historically, MSS emissions have only been claimed under a limited number of PBRs. Any MSS emissions claimed have been limited to PBRs listed previously in §106.263 or to limits specified in specific PBRs. Since MSS emissions were not considered when each PBR was originally promulgated, except those PBRs listed previously in §106.263, commission staff completed an additional review to consider MSS emissions under all additional PBRs expected to be of the same character and quantity as

the production emissions and if the emissions would be within the scope of the original PBR. This review determined that in order to ensure protection of public health and welfare, facilities authorized by these PBRs can claim only episodic releases that are quantifiable and anticipated under the new §106.269 and cannot authorize additional MSS emissions.

The new §106.4(b)(1) - (25) lists the PBRs in this chapter under which MSS emissions are expected to be equal to, or less than, production emissions, including: 1) all of Subchapter C, Domestic and Comfort Heating and Cooling; 2) all of Subchapter D, Analysis and Testing; 3) all of Subchapter E, Aggregate and Pavement, except for §106.147, Asphalt Concrete Plants; 4) all of Subchapter F, Animal Confinement; 5) all of Subchapter G, Combustion; 6) all of Subchapter I, Manufacturing; 7) all of Subchapter J, Food Preparation and Processing; 8) §106.263, Temporary Maintenance Facilities; 9) §106.265, Hand-held and Manually Operated Machines; 10) §106.266, Vacuum Cleaning Systems; 11) all of Subchapter L, Feed, Fiber, and Fertilizer; 12) all of Subchapter M, Metallurgy; 13) all of Subchapter N, Mixers, Blenders, and Packaging; 14) all of Subchapter O, Oil and Gas; 15) all of Subchapter P, Plant Operations, except for §106.371, Cooling Water Units, and §106.372, Industrial Gases; 16) all of Subchapter Q, Plastics and Rubber; 17) all of Subchapter R, Service Industries, except for §106.416, Uranium Recovery Facilities; 18) all of Subchapter S, Surface Coating; 19) all of Subchapter T, Surface Preparation; 20) §106.471, Storage or Holding of Dry Natural Gas; 21) §106.477, Anhydrous Ammonia Storage; 22) §106.494, Pathological Waste Incinerators; 23) §106.496, Air Curtain Incinerators; 24) all of Subchapter W, Turbines and Engines; 25) all of Subchapter X, Waste Processes and Remediation, except §106.532, Water and Wastewater

Treatment. Section 106.532 has been excluded from the list of PBRs that include authorization for MSS emissions in response to a comment.

All remaining PBRs have been reviewed and the commission has determined that MSS emissions are not expected to be the same character or quantity, or controlled in the same amount or manner as production emissions. MSS emissions that are different or MSS emissions that cannot be determined to be of the same character and quantity as production must use the new §106.268 to authorize planned MSS emissions or may authorize both production and MSS emissions through a case-by-case permit. The following list details these determinations: 1) existing asphalt concrete plants under §106.147 are expected to have additional VOC releases in the form of asphalt vapor from tank degassing that are likely to be greater than the small quantities released during normal operations; 2) new facilities or changes to existing facilities authorized under §106.261 and §106.262 may use §106.268 in order to provide additional flexibility; 3) the MSS emissions from the replacement of existing facilities under §106.264, Replacement of Facilities, are of unknown character, quantity, and duration due to the general scope of this PBR; 4) cooling towers under §106.371 may use §106.268 due to unknown quantities and character of water treatment chemicals during MSS activities; 5) industrial gas handling under §106.372 may have additional volatile organic compound (VOC) emissions due to lubricants and oil used for compressors or solvent usage for cleaning not normally expected during production; 6) uranium recovery facilities under §106.416 may use §106.268 due to unknown quantities and character of MSS activities and releases; 7) storage, handling, loading, and unloading of liquids under §106.472, Organic and Inorganic Liquid Loading and Unloading; §106.473, Organic Liquid Loading and Unloading; §106.474, Hydrochloric Acid Storage; §106.475, Pressurized Tanks or Tanks Vented to a

Firebox; §106.476, Pressurized Tanks or Tanks Vented to Control; and §106.478, Storage Tank and Change of Service, may use §106.268 because emissions resulting from cleanout, repairs, or pumping down of the tanks (usually opening vents to the atmosphere) are expected to be greater than normal production handling or loading emissions; 8) the MSS emissions for incinerators and heat cleaning devices under §106.491, Dual-Chamber Incinerators, and §106.495, Heat Cleaning Devices, are expected to result in excessive particulate matter emissions from burner air-to-fuel ratio adjustments or temperature controller adjustments; and 9) emissions from flares under §106.492, Flares, may have a larger quantity of VOC emissions during MSS. Additional details regarding these evaluations are available upon request from the Air Permits Division.

The new §106.4(c) specifies how emissions associated with QUAN releases may be authorized. These predictable emissions are those that any well-maintained, operated, and managed facility cannot eliminate entirely. These emissions are therefore anticipated, quantifiable to an extent, yet unscheduled. Examples are emissions that may be released intermittently from a pressure relief valve; line switching; compressor blowdowns not associated with MSS activities; or even a burst seal well before the end of its life expectancy. QUAN emissions are arguably different in nature from the most commonly reported emissions events, those unexpected incidents resulting from inadequate maintenance, malfunctions, accidents, operational errors, improper design, and disasters. Therefore, by providing an authorization mechanism for QUAN emissions, those emissions are removed from the classification of emission events. Generally, QUAN emissions will only be authorized by PBR §106.269. However, in limited circumstances, authorization may be requested through a permit review provided that emissions are minimal, activities are part of normal operation, and releases are

inherent to the process. Authorization will be at the discretion of the division director of the Air Permits Division. There are no other PBRs that may be claimed for authorizing QUAN emissions releases.

The revised §106.4(d) contains the prohibition on circumvention that was previously located in §106.4(b). There are no changes other than the proposed relettering. The commission is relocating the previous §106.4(d), concerning permits and registrations required by local air pollution control agencies, to new §106.4(g).

The revised §106.4(e) contains existing general requirements concerning compliance with commission rules that were previously located in §106.4(c). In addition to the relettering, the commission is adding the phrase "group of related facilities, and related increases" to maintain consistency with §106.4(a)(1) and other sections. The commission's proposal also added a statement to explicitly state that facilities authorized by a PBR are not exempted from other regulations or statutes that may apply. In response to several comments, the commission is removing the statement because the application of other rules and regulations to authorized facilities was, and remains, a condition of any authorization. However, registrants should be aware that PBRs may not identify all the rules and regulations that may apply to a facility.

The new §106.4(f) identifies facilities and situations that are not eligible for a PBR under Chapter 106. The new §106.4(f)(1) and (2) contain the existing prohibitions on projects that trigger NNSR permitting and PSD permitting, respectively. These prohibitions were located under §106.4(a)(2) and

(3), respectively. The commission is adding the phrase "group of related facilities, and related increases" in §106.4(f)(2) to maintain consistency with §106.4(a)(1) and other sections. The commission is also making minor grammatical revisions to improve the readability of these sections.

The new §106.4(f)(3) prohibits the use of a PBR to authorize construction or reconstruction of facilities that are a major source of HAPs for which there is no maximum achievable control technology standard under federal regulations. A source is major for HAPs if it emits 10 tpy of any individual HAP or 25 tpy of combined HAPs. This restriction will ensure that projects triggering Federal Clean Air Act (FCAA), §112(g) will undergo the required case-by-case determination of maximum achievable control technology.

The new §106.4(f)(4) prohibits the use of PBRs to authorize construction or modification that is prohibited by a condition or conditions in a Chapter 116 permit. This requirement is equivalent to the similar requirement located in the previous §106.4(a)(7) but has been rephrased to provide additional enforceability and flexibility.

The new §106.4(f)(5) prohibits the use of a PBR that would result in the relaxation or degradation of emission controls on existing facilities permitted under Chapter 116. The intent of the rule is to prevent "backsliding" of existing emission controls implemented to satisfy the best available control technology (BACT) requirements of Chapter 116 permits. In response to comments, the commission has changed the rule to allow authorization of MSS and QUAN emissions that do not meet the control requirements specified in an applicable permit since the short-term emission limits of §106.268 and

§106.269 have undergone a conservative protectiveness review. BACT for a facility's production may not be the same as BACT for MSS activities.

The adopted new §106.4(f)(6) prohibits the use of a PBR in an APWL area that would result in a net increase in emissions or exceedance of an ESL of one or more applicable APWL pollutants for that area. The APWL identifies areas where ambient air monitoring has detected elevated concentrations of pollutants of special interest. The revision is necessary because the possibility of elevated background concentrations of certain pollutants in the APWL areas makes a more detailed, case-by-case impacts review necessary to ensure that human health is protected. However, to provide operational flexibility, yet maintain protectiveness, a PBR could be claimed for a pollutant on the APWL if there would be no net increase in actual emissions already claimed and no exceedance of a state or federal air concentration standard or ESL for that pollutant from the site. The executive director will provide guidelines for this determination that are based on the intraplant trade concept for qualified facilities and the X-factors and modeling procedures developed for use with §106.261. In addition, the executive director will provide a detailed procedure on how the APWL is developed and revised on the commission's Web site. This procedure will include a discussion of the criteria for addition to, and deletion of, pollutants and areas from the list. The executive director will provide notice of changes and opportunity to comment on the APWL. More information about the APWL is available on the commissions's Web site at: *http://www.tceq.state.tx.us/implementation/tox/AirPollutantMain/APWL_index.html#who*. This rule is not retroactive and will not affect existing registrations or claims that authorize emissions of APWL pollutants.

The adopted new §106.4(f)(7) prohibits the use of a PBR to authorize additional emissions at a previously authorized facility or group of facilities that are not the direct result of construction, physical changes, or changes in method of operation. For example, subsection (f)(7) would prohibit the use of a PBR to incrementally authorize noncompliant emissions detected from a compliance test on a source of emissions authorized by a Chapter 116 permit. These emissions should have been evaluated and accounted for in the permit review, and therefore the use of a PBR for authorization is not appropriate in these cases. In such cases, the owner or operator of the permitted source is required to obtain a permit amendment to authorize the higher emissions. In addition, subsection (f)(7) prohibits the use of a PBR to authorize a facility that was constructed as part of a larger project, for example, a group of facilities that should have been authorized by a preconstruction permit action but was erroneously not represented as part of the larger project, commonly known as “as built” actions. In such cases the appropriate method to authorize the facility would be to amend the preconstruction permit. This rule language is necessary to ensure that individual facilities that are omitted from permit review are evaluated appropriately to ensure protection of public health and compliance with federal PSD and NNSR permitting requirements. Facilities that are constructed later at a permitted site and are not part of the original permitted project would not be affected by subsection (f)(7) and would still be eligible to use PBRs for authorization. This restriction is not meant to preclude an unauthorized stand-alone or subsequently constructed facility discovered during an inspection from obtaining a PBR authorization as long as the facility could have met an applicable PBR at the time of construction and continued to comply with that PBR. New §106.4(f)(7) also provides an exclusion to allow MSS and QUAN emissions to be authorized under a PBR as specified in §106.4(b). The adopted §106.4(f)(7) was also rephrased for easier readability, but the commission is retaining the proposed concept.

The new §106.4(g), concerning permits or registrations required by local air pollution control agencies, contains a requirement that was previously located under §106.4(d). The commission is also adding the phrase "group of related facilities, and related increases" for consistency with §106.4(a)(1) and other sections.

As a result of comments, the commission is not adopting proposed §106.4(h), which would have established notification and certification requirements for PBR facilities that change ownership.

The new §106.4(h), proposed as §106.4(i), allows voluntary registrations and certifications, those not specifically required to be submitted, to be reviewed at the discretion of the executive director. The commission is making this change because the review of voluntary registrations and certifications consumes commission resources that in some cases may be better used to review projects that have a larger potential impact on the environment. If the executive director declines to review such a registration, the fees shall be returned to the applicant or an account credited.

§106.6 - Certification of Emissions.

The commission is changing the title of §106.6 to Certification of Emissions. The amendment will replace the term "certified registration" with "certification" throughout the section. In the previous version of the rule, "certified registration" was used to describe the process of certification by submission of a registration form. Since the commission has developed a separate certification form specifically intended for use to comply with any certification requirement under this chapter, the term "certified registration" is outdated and potentially confusing. The commission is deleting §106.6(e)(1)

because it requires the submission of registrations before a date (February 3, 2003) that has already passed. Additionally, the commission is including language to remind owners or operators of the revised recordkeeping requirements in §106.8.

§106.8 - Recordkeeping.

The commission is amending §106.8 by adding a new subsection (d). This subsection contains recordkeeping requirements that will apply to owners or operators of sites using PBRs. The recordkeeping is necessary so that commission staff can verify that a site using PBRs is in compliance. In response to comments, the commission has modified §106.8(b) to specify that an owner or operator must provide records immediately upon request to document compliance with §106.4 and the applicable PBR. As a result of comments, the commission has also modified §106.8(d) to clarify that the list of specified records are examples of records that should be maintained, and does not prevent owners or operators from using other types of records if they are sufficient to demonstrate compliance.

§106.50 - Registration Fees for Permits by Rule.

The commission is amending §106.50(d) to allow for the refund of PBR registration fees or crediting of an account when the executive director determines that a review is not required. As discussed previously, the review of voluntary registrations and certifications consumes commission resources that in some cases may be better used to review projects that have a larger potential impact on the environment. Additionally, because there is no federal requirement for charging a fee for these registrations, the commission intends to withdraw §106.50 from consideration by EPA as a revision to the SIP.

§106.261 - New Facilities and Changes to Authorized Facilities.

The commission repeals §106.261, Facilities (Emission Limitations), and §106.262, Facilities (Emission and Distance Limitations), and replaces them with a new §106.261, New Facilities and Changes to Authorized Facilities, providing a single PBR for general use. The new PBR will eliminate overlapping or conflicting requirements between the previous versions of the PBRs, provide greater clarity, and improve protectiveness. The requirements contained in the new PBR reflect the findings of a thorough protectiveness review conducted by the commission.

The new PBR includes new equations for the determination of short-term (hourly) emission limits for air contaminants based on: distance, stack height, and applicable standard or ESL for an air contaminant. The previous versions of §106.261 and §106.262 used outdated guidelines and did not consider stack height. Also, air dispersion models have changed and modeling procedures have been updated since the last protectiveness review of these rules.

Sections 106.261 and 106.262 previously allowed a maximum hourly emission rate of 6 pounds per hour (lb/hr). The short-term emission rate in §106.262 was based on the Threshold Limit Values (TLVs) as published by the American Conference of Governmental Industrial Hygienists in 1997, which are designed primarily as a guideline of acceptable exposure levels for an employee working an average eight-hour shift in an industrial or commercial setting. These values are not appropriate for use in assessing short-term exposures of the general public for one-hour periods. Short-term emission rates in the previous version of §106.262 were determined by the equation $E = L/K$, where L is the TLV and K is a constant based on distance to the receptor.

For the new §106.261, emissions for most air contaminants will be limited to the compound's E value. The E value in lb/hr is the emission rate as calculated using the equation E = ESL/X where the ESL is the short-term ESL from the commission's list and X is a value in micrograms per cubic meter per lb/hr obtained from Table 1 included in the rule. Table 1 was based on the tables included in the commission's modeling and effects review guidance document RG-324, but modified to include distances less than 100 feet and to address issues related to the combination of the downwash and non-downwash tables. The X-values were determined based on SCREEN3 modeling results of point and low-level area source representations. The area source representation is a refinement that was not used to develop the RG-324 tables. Additionally, the X values have been rounded. Because of the general application of this PBR, conservative emission parameters were used to restrict buoyancy and momentum. In addition, the evaluation considered both rural and urban dispersion parameters and the higher predicted X-value for each distance and height from either scenario was used. Also, instead of using multiple tables to address downwash and non-downwash scenarios separately, the higher predicted X-value for each distance and height from either scenario was used. This approach is more conservative because the higher the X-value, the lower the emission rate.

In the case of compounds such as NAAQS criteria pollutants (particulate matter (PM) less than or equal to 10 microns in size (PM_{10}), sulfur dioxide (SO_2), CO, NO_x (as a surrogate for nitrogen dioxide (NO_2)), lead, and ozone), and pollutants that have a property line standard (SO_2, hydrogen sulfide, and sulfuric acid), the distance shall be the distance in feet from the emission point to the nearest property line. For all other compounds, the commission is changing the rule concerning measurement of distance to be consistent with the Texas Health and Safety Code (THSC). The distance shall be the

distance in feet, at the time of the claim, from the emission point to the nearest recreational area, residence, or other occupied structure not used solely by the owner or operator of the facilities or the owner of the property upon which the facilities are located. Air contaminants from agricultural facilities are primarily cellulose; consequently, there are no distance requirements for these facilities since cellulose (as particulate matter) is regulated under 30 TAC Chapter 111 through process-weight determinations, not air contaminant concentrations.

For certain specific contaminants that are regulated by an NAAQS or property line standard, the X-value for the numerator portion of the equation is specified in the rule language and the distance is measured from the emission point to the nearest property line. The commission is changing the rule to remove the equation for total particulate matter based on the current standard for total suspended particulate (TSP) in 30 TAC Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter. For PM_{10}, §106.261(a)(5)(A) specifies that the equation is $E = 150/X$, which is based on the NAAQS. Section 106.261(a)(5)(B) specifies that the equation is $E = 365/X$ for SO_2 and is based on the NAAQS. The limit for CO in §106.261(a)(5)(C), represented by the equation $E = 10,000/X$, is based on the NAAQS. Section 106.261(a)(5)(D) specifies that the limit for NO_x is $E = 1,000/X$, based on the NAAQS for NO_x. The limit for ozone in §106.261(a)(5)(E), represented by the equation $E = 155/X$, is based on the NAAQS. Section 106.261(a)(5)(F) specifies that the equation is $E = 108/X$ for hydrogen sulfide and is based on the standard in 30 TAC Chapter 112, Control of Air Pollution from Sulfur Compounds. Section 106.261(a)(5)(G) specifies that the equation is $E = 15/X$ for sulfuric acid fume or mist and is based on the standard in Chapter 112. Section 106.261(a)(5)(H) specifies that the equation is $E = 1.5/X$ for lead and is based on the NAAQS.

Short-term emission limits for agricultural facilities that emit cellulose fiber are specified in §106.261(a)(5)(I). For these sources, the rule would authorize emissions of no more than the emission rate specified in §111.171, Emission Limits Based on Process Weight Method. Total allowable emissions of cellulose fiber cannot exceed 10 lb/hr. This requirement is specific for those facilities that emit particulate matter from the handling, loading, unloading, drying, manufacturing, or processing of grain, seed, legumes, or vegetable fibers. Such agricultural operations are not subject to the property line standards in Chapter 111 and are designated in the commission's regulatory guidance document, *RG-324, Modeling and Effects Review Applicability*, as types of emissions that do not require a health effects review. However, agricultural operations must comply with §111.171 in order to meet state permitting requirements. Therefore, this requirement limits the emissions from these types of operations as stringently as a permit.

In the adopted new §106.261, short-term emission rates for compounds other than those with standards, are specified in §106.261(a)(5)(J). The limits for these compounds are derived by the equation E = ESL/X, where E = the allowable emission rate in lb/hr, ESL = the short-term ESL of the compound, and X = a generic ground-level air concentration based on a generic emission rate of one lb/hr. For compounds with no published ESL, applicants can either accept a default short-term emission limit of 0.04 lb/hr, or contact the Toxicology Section of the TCEQ to request an ESL. The staff will develop an ESL and post it on the commission's Web site for use by applicants for the PBR.

In response to public comment, the commission is including a new §106.261(a)(4) concerning multiple emission points. In the case of multiple emission points, each emission point will be proportionally

limited to using the compound's E value at that point multiplied by the specific compound's weight fraction at that point. Interpolation is allowed between points on the chart. There shall be a minimum distance of 25 feet that applies to uses for Table 1.

EXAMPLE:

Consider a site with two emission points, A and B, both emitting the same compound with an ESL of 200 and each with a weight fraction for the compound of 50%. Point A has a height of 20 feet and a distance of 100 feet. Consequently, the allowable emission rate of point A would be $E = 200/1300 * 0.50 = 0.076$ lb/hr. Point B has a height of 50 feet and a distance of 500 feet. The emission limit for point B is $E = 200/210 * 0.50 = 0.476$ lb/hr.

To evaluate the potential impact of these changes on the regulated community, the Air Permits Division compared 742 registrations for §106.261 and §106.262 and reviewed them for compliance with the new §106.261. Out of the 742 claims, only 32 or approximately 4% would not have met the new §106.261 requirements. These 32 claims not meeting the new §106.261 requirements were for short distances (44%), low stack height or fugitive emissions (31%), and low ESLs (25%). There were approximately 318 claims that would likely have passed if additional information were available. These registrations either did not claim any distance to the property line or receptor or indicate a stack height (73%), there was no electronic technical review available (12%), or there was no speciation of compounds (9%). The new §106.261 will allow significantly more short-term emissions than the 6 lbs/hr maximum allowed under the previous versions of §106.261 and §106.262 for mildly toxic or nontoxic compound emissions. An example is propane, which was limited to 6 lb/hr and 10 tpy in

§106.261. In the new §106.261, propane, with a short-term ESL of 18,000 micrograms per cubic meter, would be limited to 13.3 lb/hr out of a 10-foot stack with 100 feet of distance or 189.5 lb/hr out of the same 10-foot stack with 3,000 feet of distance. For both cases, the annual emissions that could be authorized would increase from 10 tpy to 25 tpy.

In addition to the short-term limits described previously, §106.261(a)(6) will limit benzene and ethylene dichloride to one tpy. Chronic effects due to the potential for continued long-term exposure to emissions of these two compounds are of special concern. The emissions of these compounds that would be allowed by using short-term ESLs in Table 1, would not necessarily be protective for individuals who potentially could be exposed to those emissions on a continuous basis (8,760 hours per year). The commission did not consider using the long-term ESL to determine the short-term emission limits for these compounds as this decision would have resulted in overly restrictive short-term limits. The long-term limit of one tpy was based on an evaluation that considered: the long-term ESL; a comparison with allowable emissions at permitted facilities; and the potential use of this PBR by a number of different types of facilities. Since the commission cannot conduct a case-by-case impacts review for this PBR, the use of a fixed annual emission limit represents a compromise that balances maximum short-term flexibility and long-term protectiveness.

Section 106.261(a)(7) specifies that when other PBRs are included in a claim for §106.261, all emissions shall meet the applicable emission limits in §106.261. The total emissions would include emissions from all proposed facilities and all related emission increases upstream and downstream of the facilities to be authorized under all PBRs. The emission limit under §106.261 would be in addition

to all the applicable requirements for construction and operation contained in each other PBR involved in the claim. This requirement was added to ensure emissions are insignificant and entire projects are evaluated against an updated protectiveness review when authorizing multiple PBRs.

The proposed §106.261(a)(4), which restricted the authorization of the use of certain quantities of compounds based on toxicity, was not adopted based on the commission's agreement with comments received that the requirement was redundant with federal rules.

The previous versions of §106.261(a)(8) and (9) prohibited visible emissions from any point or fugitive source in excess of 5% opacity. The adopted new §106.261(a)(8) will instead require that visible emissions, from any point or fugitive source, not leave the property for a period exceeding 30 seconds in any six-minute period as determined by EPA Test Method 22. This alternative method is currently used in other PBRs and numerous permits and has several advantages. Unlike EPA Test Method 9, EPA Test Method 22 does not require a certified opacity observer, which is a cost savings for the facility owner or operator and the general public. In addition, EPA Test Method 22 does not have the background restrictions of EPA Test Method 9 and allows a great variety of observations to be made in different circumstances. This change provides some flexibility for operators regarding visible emissions, focuses on emissions at the property line and beyond, and still maintains visible emission limitations.

Neither §106.261 nor §106.262 previously allowed additions of air pollution abatement equipment for physical changes or modifications to existing facilities. Additions of pollution control equipment or methods associated with facilities authorized by new §106.261 will be allowed by new subsection (a)(9)

provided they meet, at a minimum, the requirements of a qualified facility (no more than ten-year-old BACT). The commission is changing the rule to remove the authorization for changes to pollution control equipment as these changes may trigger a case-by-case BACT review.

The new PBR has a tiered system of certification and registration depending on the type of facility authorized. In response to comments, the commission has revised the notification, registration, and certification requirements of this PBR to reduce the burden on non-major facilities. Emission increases of less than five tpy at non-major facilities will not be subject to any notification, registration, or certification requirements. However, the rule still requires that facilities meeting the definition of major source under §122.10(13) submit a certification that summarizes all uses of this PBR for facilities or projects with annual emissions increases of less than five tpy authorized under §106.261(b)(1). This requirement ensures that emissions authorized by this section have federally enforceable limits and that emissions do not trigger any additional federal NNSR or PSD review. The new §106.261(b)(2) requires all facilities or emission increases of five tpy or greater to be registered, regardless of location at a minor or major site. In those instances where a registration is not required, applicants may voluntarily submit a registration. However, review of these registrations will be done at the discretion of the Air Permits Division director.

When pollution control equipment is added as a part of a project, it may be authorized by notification to the Air Permits Division and the appropriate regional office within ten days of the start of construction or operational change of the facility or control, assuming a certification or registration is not otherwise required because of emission increases. The notification should describe the process, the

emission units concerned with any emission point numbers identified, affected authorizations, and an estimate of the control efficiency and emission increase(s) and reduction(s) that will be achieved for the project. Modifications of existing pollution control equipment require registration. All registrations must be submitted with the appropriate fee, and will be responded to by the commission. In order to provide required public access, notifications and certifications will be retained in the commission's files, but will not typically be reviewed or a response given by the executive director. No fee is required.

Throughout §106.261(b), the commission is also clarifying that the phrase "begin actual construction" will have the meaning of the definition in §116.12, Nonattainment and Prevention of Significant Deterioration Review Definitions.

The new §106.261(c) lists those facilities or activities that are specifically not authorized by this PBR, including: construction of a facility for which there is another PBR or standard permit in effect; any change to a facility for which there is a PBR or standard permit in effect; and emissions resulting from MSS or QUAN. This requirement will prevent facility changes that may circumvent the original protectiveness evaluation of a PBR or standard permit or result in backsliding of distance limits, contaminant restrictions, or control requirements. It will also prevent facilities from exceeding the annual cumulative limitations in §§106.263, 106.268, and 106.269, or other specific PBRs, to ensure the emissions from these activities or facilities remain insignificant and protective of public health and welfare.

The new §106.261(c) also specifically allows the use of this PBR to authorize the subsequent authorization of additional air contaminants that are neither authorized nor prohibited at a facility authorized by a PBR or standard permit as long as the facility continues to meet the conditions of the original authorization. For example, the original authorization for a storage tank may not include a certain compound that the owner or operator wishes to store. This PBR will authorize emissions from the new compound, as long as the original authorization does not prohibit use of the new compound.

§106.263 - Temporary Maintenance Facilities.

The commission is repealing §106.263, Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities, and replacing it with adopted new §106.263, Temporary Maintenance Facilities. The changes to this PBR are not substantive, only administrative, with regard to temporary maintenance facilities. The commission is revising this PBR to authorize only temporary maintenance facilities. Authorization for MSS emissions is in the new §106.268; therefore, the new §106.263 contains no MSS provisions. In addition, new §106.263 does not contain a *de minimis* exclusion because *de minimis* facilities are not required to have an authorization for air emissions. Also, the exclusions relating to other PBRs are no longer needed due to the changes in §106.4(b).

The control device requirements of repealed §106.263 will be replaced with a single requirement that all control devices comply with the requirements of §106.533(g), Remediation, which was recently updated and includes additional control devices.

In response to public comment, the commission is allowing projects to operate for up to 365 days.

§106.268 - Maintenance, Startup, and Shutdown (MSS) Emissions.

Emissions resulting from planned MSS as part of a facility's normal operation can be authorized under adopted new §106.268. This new section can be used in conjunction with the concurrently issued non-rule "Air Quality Standard Permit for Maintenance, Startup, and Shutdown Activities" and NSR permitting criteria as adopted in this issue of the *Texas Register* in Chapter 116 for facilities at a site. In general, only one of these authorization mechanisms will be used for each type of MSS activity at a facility or group of related facilities. Multiple methods of authorization may be used for the same activity only if the PBR or standard permit is incorporated into the permit at an amendment, renewal, or within two years of the claim, whichever is earliest. This will provide oweners and operators flexibility to authorize emissions and will enable the commission to perform a review on a regular basis. To ensure protection of public health and welfare, the new §106.268 includes air contaminant emission limits for specific air contaminants based upon the restrictions contained in adopted new §106.261, a PBR that is often used in conjunction with other authorizations. In addition, annual emissions are restricted by a cumulative limit between new §§106.263, 106.268, and 106.269.

Adopted new §106.268(c) identifies certain facilities, emissions, or activities not covered by this section. This authorization does not apply to MSS emissions associated with facilities or operations listed in §106.4(b), new or modified facilities, or reconstruction of a facility. This authorization also does not apply to physical or operational changes to a facility that increase capacity or production beyond authorized performance levels; first-attempt at repairs on piping fugitive emissions authorized by an NSR permit, standard permit, or another PBR; or emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation, and maintenance consistent

with good engineering practice. These facilities, emissions, or activities are excluded because either the MSS emissions have already been accounted for, or this section is an inappropriate means of authorization. Facilities unable to meet the requirements of this PBR may be authorized under another section of Chapter 106 or 116.

Adopted new §106.268(d) authorizes MSS emissions that meet both the short-term and annual emission limitations of new §106.261 to ensure protection of public health and welfare for each air contaminant.

Adopted new §106.268(e) limits site-wide emissions for any 12-month rolling period to less than any applicable emission limit under §106.4(a)(1) - (3) for the aggregate of emissions authorized by this section, §106.263, and §106.269. This limitation ensures that the combined emissions from these authorizations do not exceed levels that have been determined to be protective of public health and welfare.

Adopted new §106.268(f) requires facility owners to retain records with sufficient information to demonstrate compliance. Such records include the type and reason for the activity or facility construction; the process and equipment involved; the date, time, and duration of the activity or operation; the type and amount of the air contaminants involved; and any required monitoring data.

§106.269 - Quantifiable, Anticipated (QUAN) Emissions.

The commission adopts this new PBR to authorize QUAN emissions. In response to public comment, the commission is including the definition of QUAN as it is also defined in §116.10(16)(C). These

emissions are those that any well-maintained, operated, and managed facility cannot eliminate entirely. These emissions are therefore quantifiable and anticipated, yet unscheduled. Examples are emissions that may be released intermittently from a pressure relief valve, line switching, compressor blowdowns, or even a burst seal well before the end of its life expectancy. QUAN emissions are arguably different in nature from the most commonly reported emissions events, those incidents resulting from inadequate maintenance, malfunctions, accidents, operational errors, improper design, and disasters, and therefore should be taken out of the classification of "emission event" by providing an authorization mechanism.

Adopted new §106.269(b) identifies activities that are not authorized by the PBR. This authorization does not apply to: certain additional emissions, new or modified facilities, or reconstruction of a facility. This authorization also does not apply to physical or operational changes to a facility that increase capacity or production beyond authorized performance levels or result in the emission of a new air contaminant; first-attempt repairs on piping fugitive emissions authorized by an NSR permit, standard permit, or another PBR; or emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation, and maintenance consistent with good engineering practice. These facilities, emissions, or activities will be excluded because either the QUAN emissions have already been accounted for, or this section is an inappropriate means of authorization.

Adopted new §106.269(c) will authorize QUAN emissions that meet both the short-term and annual emission limitations of §106.261 to ensure protection of public health and welfare for each air contaminant.

Adopted new §106.269(d) is intended to limit the amount of QUAN emissions that can be authorized, prevent stacking of QUAN and MSS emissions, and limit the total of QUAN, MSS, and temporary maintenance facility emissions to an amount not to exceed any applicable emission limit in §106.4(a)(1) - (3). This limitation ensures that the combined emissions from these authorizations do not exceed levels that have been determined to be protective of public health and welfare. QUAN emissions from a well-maintained and properly operated facility should not approach the emission levels from normal production. In response to public comment, the commission is deleting §106.269(e), which would have limited QUAN emissions to less than 10% of maximum allowable site emissions. This requirement is redundant to the other limits on QUAN emissions.

New §106.269(e) requires facility owners to retain records with sufficient information to demonstrate compliance. Such records include: the type and reason for the activity or facility construction; the process and equipment involved; the date, time, and duration of the activity or operation; the type and amount of the air contaminants involved; and monitoring data.

REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a “major

environmental rule." Under Texas Government Code, §2001.0225, a "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rules are intended to more effectively focus commission resources, streamline the air quality PBR process, update administrative and technical requirements for certain PBRs, and address unnecessary registration and fee requirements. These changes include providing flexibility for authorizing emissions that have not historically been authorized from planned MSS activities and from QUAN emission releases. Certain aspects of this rulemaking are intended to protect the environment or reduce risks to human health from environmental exposure. The rules improve regulatory flexibility and reduce costs to regulated facilities and are therefore unlikely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. Because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225 definition of "major environmental rule."

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because this rulemaking does not constitute a major environmental rule, a regulatory impact analysis is not required.

TAKING IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that will otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a taking impact analysis for the rules. Promulgation and enforcement of the rules will not affect private real property in a manner that will require compensation to private real property owners under the United States Constitution or the Texas Constitution. The rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the rules will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991,

as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking action is to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The rules are intended to more effectively focus commission resources, streamline the air quality PBR process, update administrative and technical requirements for certain PBRs, and address unnecessary registration and fee requirements. The rules also provide flexibility for authorizing emissions from facilities for MSS activities and from QUAN emission releases that have not historically been authorized. These changes assist in reducing excess emissions, improving compliance with state and federal air pollution control requirements, and improving overall air quality in Texas. Certain aspects of this rulemaking are intended to protect the environment or reduce risks to human health from environmental exposure, and include several measures that will generally improve protectiveness and reduce the environmental risks associated with multiple PBR authorizations. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for

Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Potential to emit (PTE) calculations, used to determine applicability of the FOP Program, do not include emissions that were previously unauthorized, such as those from MSS; or remain unauthorized, such as emission events. As of the effective date of these rules, owners and operators of sites that will have newly authorized emissions will be required to recalculate PTE to include authorized MSS emissions and reevaluate applicability of their sites to the FOP Program. Further, the new and amended sections in Subchapter A of Chapter 106 are applicable requirements under 30 TAC §122.10(2). Operating permit holders will be required to revise their permits to incorporate any NSR changes, according to the appropriate operating permit revision process.

PUBLIC COMMENT

A public hearing on the proposal was held in Austin on January 31, 2006. Comments were received from: Air Consulting & Engineering Solutions, Ltd. (ACES); Arkema Inc. (Arkema); Association of Electric Companies of Texas, Inc. (AECT); Baker Botts L.L.P., on behalf of the Texas Industry Project (TIP); Benton & Associates (Benton); BP Products North America, Texas City site (BP); Celanese Chemicals, Clear Lake Plant (Celanese); City of Houston (Houston); ConocoPhillips Company (ConocoPhillips); Crain, Caton & James, P.C. (CCJ); Department of the Air Force, Dyess Air Force Base (Dyess AFB); Department of the Air Force, Regional Environmental Office (USAF-

Regional); Devon Energy (Devon); Dow Chemical Company (Dow); Duke Energy Field Services (Duke); Eastman Chemical Company (Eastman); ExxonMobil Downstream and Chemical (ExxonMobil DC); ExxonMobil Production Company (ExxonMobil Production); Galveston Houston Association for Smog Prevention (GHASP); Gulf Coast Waste Disposal Authority (GCA); Harris County Public Health and Environmental Services (HCPHES); Haynes and Boone LLP (Haynesboone); Martin Marietta Materials Southwest Ltd. (Martin-Marietta); Response Management Associates, Inc. (Response Management); Shell Chemical LP - Deer Park Chemical Plant and Shell Deer Park Refinery (Shell); Sierra Club, Houston Regional Group (HSC); Source Environmental Sciences, Inc., on behalf of numerous clients (Source); Texas Chemical Council (TCC); Texas Instruments Incorporated (TI); Texas Pipeline Association (TPA); Texas Oil and Gas Association (TxOGA); United States Environmental Protection Agency (EPA); URS Corporation (URS); and Zephyr Environmental Corporation (Zephyr). While some commenters supported parts of the proposal, all were in general opposition and had numerous suggestions for changes.

RESPONSE TO COMMENTS

EPA expressed general support for the proposed authorization of MSS emissions through permitting of those emissions under Chapters 106 and 116.

The commission appreciates the support.

GHASP made a general comment that the current proposals fail to meet all FCAA requirements and EPA guidelines for permitting MSS emissions. GHASP added that the proposed structure of

permitting options and the addition of QUAN emissions unnecessarily complicates permitting and enforcement. GHASP opposed the adoption of this proposal. HSC noted that new facilities or changes to existing facilities authorized under PBR, specifically §106.261 and §106.262, may use additional PBRs to authorize MSS and QUAN and provide additional flexibility, but that the commission does not explain why "additional flexibility" is required, how this will be used, and how this will reduce air emissions and protect the health and welfare of the public.

The commission is not making changes in response to these comments. As discussed later in responses to specific comments, the commenters expressed concern with regard to the commission's ability to determine if the emissions would be protective of human health and welfare and the ability of the commission to adopt rules that will comply with the requirements of the FCAA.

The commission has historically restricted authorization to emissions associated with steady-state production and has generally excluded emissions associated with MSS activities. This rulemaking consists of three mechanisms for authorizing planned MSS emissions, which are of the same type as currently available for emissions from production. These three mechanisms for MSS mirror those that have existed for many years for production emissions and include PBRs, which are for smaller facilities or activities with insignificant emissions; a standard permit that allows somewhat more flexibility for emissions that exceed the quantities established in the PBRs but cannot trigger any federal review; and regular NSR permits that allow maximum flexibility and include a case-by-case analysis for larger, more complex facilities. The commission is adopting rules in

Chapters 106 and 116, as well as a standard permit for MSS, for the authorization of emissions for which, generally, limited authorization mechanisms have been available from the commission. These authorization mechanisms provide flexibility for owners and operators and also allow efficient use of commission resources to focus on larger and more complex facilities. This permitting strategy also provides consistency in permitting and enforcement activities by the commission. As previously discussed in this preamble, this strategy was developed to ensure the protection of public health and welfare while providing flexibility to regulated industries and allowing an efficient use of the commission's resources.

The QUAN authorization is also a PBR authorization and is similar to existing PBRs in that it addresses emissions from a facility, specific type of process, or activity. In this case, the emissions are from well-designed, well-operated, and well-maintained facilities with quantifiable and anticipated but unscheduled emissions, and the facility has otherwise reduced emissions as much as is technically feasible and economically reasonable.

These amendments comply with EPA's policy regarding excess emissions, which provides that startups and shutdowns of process equipment are part of the normal operation of a source, and should be accounted for in the planning, design, and implementation of operating procedures for the process and control equipment. EPA policy also states that planned maintenance is a predictable event and should be included in the permit. Therefore, predictable, quantifiable emissions associated with planned MSS activities can and should be authorized. The commission

is adopting a definition of "normal operations" to specify the categories of emissions for which authorization can be obtained.

The commission expects that many of the authorizations sought will be for actual emissions that are currently unauthorized, and therefore there will be no adverse impact to the state's air quality by authorizing these emissions. Rather, by providing specific limitations based on the protectiveness review for the PBRs, the MSS standard permit, and the reviews that will be performed for individual NSR permit applications, the commission expects reductions in actual emissions. Further, since these emissions were never authorized but were actually emitted, the commission is strengthening its SIP by adding the specific, protective requirements for authorization of these emissions. These changes together with the commission's recent adoption of changes to its emissions events rules in Chapter 101, Subchapter F, published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8884), provide incentive for excess emissions to be reduced and corresponding reductions in reporting of excess emissions under Chapters 101 and 122.

EPA commented that all potential emissions, including quantifiable MSS emissions, must be included in NNSR and PSD applicability determinations and air quality permits. EPA stated that these emissions are part of normal operations that should be accounted for in planning, design, and implementation of operating procedures for process and control equipment. EPA expressed general concern regarding appropriate technology review, air quality impacts, public participation, applicability of federal requirements, and permitting of QUAN emissions.

For those seeking authorization of new MSS emissions, the applicant must demonstrate why the emissions are predictable and quantifiable from planned activities. Owners and operators must provide information adequate to quantify whatever amount of MSS emissions they seek to authorize, regardless of whether the type and quantity are at or below historical amounts of these emissions. The authorization of MSS does not affect the application of any federal permitting requirements. When MSS and QUAN emissions are authorized, the PTE must be recalculated in determining applicability of Title V, maximum achievable control technology, and other federal standards and requirements.

EPA commented that in some situations, the authorization of MSS emissions for existing permitted entities will trigger an additional permit amendment. For example, if a permitted entity did not include MSS emissions in determining PTE for its existing permit and now will be a major source by inclusion of MSS emissions (either by PBR or standard permit), the source must amend its existing permit to document the new major source status. EPA recommended revisions to the notification requirements for PBRs and standard permits to identify such sources.

The commission is aware that some permitted entities will trigger PSD and NNSR when MSS is included in the authorization. The commission disagrees that notification requirements for PBRs and standard permits are necessary, because PSD and NNSR applicability is already considered when PBRs or standard permits are issued. No PBR or standard permit claim may trigger a federal NNSR or PSD review. The rules require PSD and NNSR applicability review when any increase exceeds the PSD or NNSR federal applicability level.

EPA commented that the notification requirements for the PBR and the standard permit should be revised to include the facilities' emission inventory emission rates.

The commission is not changing the rule in response to this comment. Any emissions that will be authorized by the PBR and standard permit must be identified in records or on the registration or certification form, including any MSS emissions that would have been identified in an emissions inventory.

EPA recommended that TCEQ revise the PBR and standard permit to require a determination that compliance with existing emission limitations is infeasible, to require that MSS emissions be minimized prior to authorization of MSS emissions by PBR or standard permit, and to make the same determinations in individual permit reviews. GHASP stated that operators should be required to include permit conditions that define for each unit the startup and shutdown circumstances under which otherwise applicable BACT or lowest achievable emission rate (LAER) would apply.

The commission is not changing the rule in response to these comments. PBRs are a separate authorization process independent of existing authorizations, such as NSR permits. The commission allows authorization under PBRs or standard permits independently of existing authorizations. MSS emissions authorized by §106.268 are not significant and do not endanger public health. MSS emissions under the standard permit must meet BACT, which requires that emissions will be minimized, considering economic reasonableness and technical practicability. No federal NSR action may be authorized through a PBR or standard permit. The use of PBRs

and standard permits provides an efficient and protective mechanism to authorize limited quantities of these emissions. The use of PBRs and standard permits allows the commission to focus resources on larger sources that pose a greater risk to the environment. If federal applicability is triggered, the source is required to perform a BACT or LAER review as part of the permit case-by-case review process.

Benton asked if the proposal requires that existing facilities come under the amended §106.4. If not, Benton asked for the location of the regulatory guidelines for the existing facilities. Benton asked about the status of facilities holding PBRs that did not require registration if the proposed changes are adopted. USAF-Regional suggested that the new maximum allowable emission quantity of CO and NO_x be implemented in a non-retroactive manner and that the TCEQ adopt the same approach for military sites that have been subject to public notice in the past and that such sites continue to be excluded from the cumulative limits on PBR emissions.

In general, existing PBR facilities will not be substantially affected by the revisions. The proposed revisions to §106.4 will only apply to PBR claims and registrations that occur after the effective date of the rules. Existing PBR facilities will remain subject to the terms of §106.4 and individual PBRs (or their predecessors) that were in effect at the time the claim or registration was made. Previous versions of §106.4 and previous versions of PBRs are available from the commission's Web site. Additionally, the commission has revised §106.4(a)(3) to include a grace period during which sites without a current permit may continue to authorize emissions in excess of the limit in §106.4(a) as long as there is a current permit application pending. Section 106.8(c)

requires that existing PBR facilities maintain copies of those historical terms and conditions to document the rules that apply to that facility. The revisions to §106.6, Certification of Emissions, and §106.8, Recordkeeping, are retroactive and do apply to all existing facilities. This adoption does not affect any previous PBR claims if the facility has not been modified.

Benton commented that the proposed changes that are intended to streamline the process, update requirements, and focus resources appears to make the system more onerous for the applicant. Examples of this burden are the additional, more restrictive terms and reduced limiting values for contaminants. Benton also commented that certifications required by the proposal will add to the difficulties in preparation of a PBR application. Haynesboone made a general comment that the revisions to Chapter 106 place detailed and unwarranted restrictions on the use of PBRs and expressed the belief that they burden smaller entities with requirements for extensive analyses to qualify or maintain the use of a PBR. Haynesboone also commented that many of the proposed restrictions are unreasonable, uneconomical, and would impose burdens on both large and small sites using PBRs, without a corresponding benefit.

Arkema expressed general support for the TCEQ's proposal to clarify the rules for MSS activities. Arkema requested that the TCEQ ensure that all regulated entities may take full advantage of the PBR and standard permit systems to manage and modify all MSS and QUAN emissions currently found in Chapters 106 and 116.

Regulated entities may choose among various methods of authorization as they decide are appropriate and necessary. This approach provides flexibility while ensuring the level of review is also appropriate.

TIP, Duke, and ExxonMobil DC made a general comment that the rulemaking for MSS and QUAN should be separated from that for Phase 2 of the PBR project because they believed that the revisions to Chapter 106 requirements unrelated to MSS and QUAN had not been adequately justified. TIP stated that the TCEQ had alluded generally to protectiveness as a reason for the changes but had not identified the issue justifying the greater level of protection. BP, Celanese, ConocoPhillips, Duke, Shell, and TI commented that the TCEQ should defer to a future rulemaking for proposed new PBR general exclusions and restrictions unrelated to MSS or QUAN, that the "protectiveness" rule package should be decoupled from MSS, and that adequate public comment should be afforded the non-MSS changes in subsequent rulemaking. GCA commented that the rule package includes proposed changes to PBRs that are not related to MSS or QUAN emissions and the explanation for these changes was not addressed in the proposed rule. GCA also commented that the lack of supporting information reduced the opportunity to provide meaningful and substantive public comment. GCA recommended these changes be proposed again at another time.

The rule changes for authorization of MSS and QUAN emissions and the PBR Phase 2 rule changes were linked because PBRs §106.261 and §106.262 were scheduled to be updated as a part of the Phase 2 review, and emission limits in the PBRs for MSS and QUAN depend on §106.261. Phase 2 of the PBR project was initially scheduled to resolve protectiveness issues, ensure that

PBR emissions are not significant, and address a number of concerns about general conditions for PBRs. The authorization of MSS and QUAN became a priority issue due to EPA concerns about emission events and corresponding revisions to Chapter 101, which phased out the affirmative defense for emission events and MSS. MSS and QUAN will add new authorized emissions across the state, and the authorization for these emissions must be protective of public health and welfare. The commission considers revising the PBRs that will be used to authorize a portion of these emissions as related and necessary. Additional background information relating to the proposed revisions to Chapter 106, such as air modeling, emission calculations, source surveys, and PBR cumulative use information was made available upon request. Additional details have also been provided in the SECTION BY SECTION DISCUSSION of this preamble.

TIP and ExxonMobil DC commented that the preamble to Chapters 106 and 116 and the technical summary of the standard permit all mention that it is the commission's intention to include plant turnarounds that occur every few years in MSS authorizations. Since some turnarounds may occur on a five- or even a ten-year cycle, the phrase "every few years" should be deleted.

The commission recognizes that some planned MSS activities may not occur at a high frequency and is making the suggested change in the preamble by replacing "which occur every few years" with "two to ten years."

Houston commented that although it strongly supports regulations that would limit the affirmative defense and identify and limit MSS emissions, it does not support the adoption of the rules as

proposed. Houston noted that the current proposal is too complex and does not clearly address some basic issues regarding MSS. Houston expressed the belief that determining the emission limit is difficult and will be burdensome on agencies charged with enforcing requirements because the applicable emission limits in a PBR will be related to the chemical released, distance to the fence line or the nearest receptor, and stack height. Alternatively, Houston suggested that permits could be called in or reviewed on a set schedule to revise the emission table to include MSS.

The commission agrees that the PBR's applicable emissions limits will be related to the specific chemical, distances, and heights of release, but are of the same or similar complexity as some existing PBRs as well as new §106.261. Some specific PBRs already include MSS emissions when the MSS emissions are of the same character and amount (or less) as production emissions, as noted in the amended rule. There is no need for a call-in of outstanding permits, because the commission has provided a variety of authorization mechanisms for these emissions and it is incumbent on the operator to choose the authorization that is most appropriate. Further, the commission does not have the authority to "call in" permits. Evaluation of each individual NSR permit (case-by-case) solely for MSS is not practical or appropriate.

ACES and Zephyr recommended that ethane remain on the list of chemicals exempt from the definition of "air contaminant." ACES expressed the belief that the environmental impacts of ethane are very similar to those of methane and carbon dioxide, and ethane should be treated in the same manner as those chemicals. ACES is also concerned about the burden of including ethane in future authorizations that will result if ethane is treated as an air contaminant. If the TCEQ elects to treat ethane as an air

contaminant, ACES requested the implementation of a "phased" approach to permitting ethane emissions to allow for modifying existing authorizations to include ethane emissions, so that unauthorized ethane emissions will not result in immediate violations of the requirement to obtain a permit. ACES also asked that the TCEQ specify whether ethane will be treated as an "other contaminant" with a limit of 25 tpy under §106.4(a)(1) and (3), or if a separate category will be created for limiting ethane emissions authorized by PBR.

The regulated NSR pollutant for purposes of PSD is "municipal solid waste landfills emissions (measured as nonmethane organic compounds)." Chapter 116 has been revised to state that ethane, except as regulated as part of MSW landfills emissions, is excluded from the requirement to obtain authorization. The commission has also removed ethane from the list in §106.4(a)(1). For purposes of Chapter 106, the limit is 25 tons of ethane, but only as a portion of MSW landfill emissions.

BP, Celanese, Shell, and TI commented that the TCEQ should drop the language barring multiple authorization methods for MSS emissions from a given facility. BP, Celanese, Shell, and TI also commented that the TCEQ should not mandate one form of permitting over another by rule. BP and Celanese commented that the proposed rules would deny authorization in an amendment based on an asserted PBR applicability, and believe requiring an applicant to prove a negative (i.e., the project could not be redesigned to fit a PBR) has never been a function in an air permit review. EPA asked that the commission confirm that sources with permits authorizing MSS emissions cannot qualify for the PBR or the standard permit and recommended that a corresponding provision be added to

§106.4(f). GCA commented that the concept of mutually exclusive forms of authorization for MSS emissions from a given facility is a significant departure from previous agency practice, and facilities that have attempted to authorize MSS emissions at the encouragement of commission staff, are penalized under this approach. GCA stated that the commission should eliminate this language. ACES commented that in cases where MSS emissions are included in a permit, a PBR should be available for minor physical or operational changes affecting MSS emissions to avoid many permit amendments. TIP, Dow, Duke, ExxonMobil DC, GCA, TCC, and TxOGA commented that §106.268(b)(2) excludes this PBR from authorizing emissions at a facility that already has MSS emissions authorized. Dow also commented the proposed paragraph appears to allow only one form of authorization for MSS emissions from a facility. Dow suggested that the commission make all forms of authorization available for MSS emissions even if from the same facility.

The commission is removing the requirement that a PBR or standard permit must be used for MSS authorization if possible. In addition, the commission is revising the rules to allow more flexibility in authorizing MSS for any given activity. If an MSS activity was previously authorized, an additional authorization mechanism may be used if it is incorporated into the facility's permit or standard permit when next amended, renewed, or within two years of the claim, whichever is earliest. For example, if a facility is authorized to perform eight filter changes by claiming the MSS standard permit, another filter change may be authorized using §106.268 if notification is submitted and §106.268 is subsequently rolled into the MSS standard permit or underlying NSR permit. This will allow the executive director to evaluate impacts from the emissions on a regular basis while providing flexibility.

HCPHES objected to including QUAN emissions in the definition of normal operations. HCPHES requested clarification that emissions resulting from operator error are also specifically excluded from the definition of normal operations. HCPHES generally agreed with and supported the commission on proposed §106.4(a) - (g) except for §106.4(c) and (f)(7) that creates the QUAN release authorization mechanism.

QUAN emissions have been defined to be quantifiable and anticipated, and consistent with good operational practice and good engineering practice. These emissions are those that any well-maintained, operated, and managed facility cannot eliminate entirely. The proposed definition of normal operation excludes accidents, and in most cases operator error would be viewed as an accident. Operator error is not part of normal operation.

EPA indicated support for the proposed change to §106.4(a)(1) that would reduce the total actual emissions that may be authorized under a single PBR claim.

The commission appreciates the support.

Haynesboone recommended that the TCEQ include language in Chapter 106 similar to that proposed in §116.10(2), retaining the exclusion of "common" air contaminants.

The commission is not making changes to the rule in Chapter 106. The commission is changing the rule to more clearly reference the applicable definition of air contaminant, as defined in

§116.10(2). The commission will retain the list of excluded substances in Chapter 116 because the need to obtain an air emission authorization, including a PBR, is specified in Chapter 116.

TIP, Duke, ExxonMobil DC, GCA, and TCC objected to the extension of PBR emission limits from facility to groups of facilities and related emissions in §106.4(a)(1) because it would restrict the ability to authorize changes by qualified facility flexibility, amendment, or other PBRs, since the emissions are related. TIP and Duke stated that this language was an overly broad application of the PBR general limits and should be deleted.

The commission will retain the phrasing concerning groups of facilities and related increases as proposed because this is necessary to ensure that emissions from the entire project are not significant, as required by statutes concerning PBR use and application. When a PBR claim or registration is made, all corresponding changes with the potential to increase emissions must be included to ensure that the combined emissions for the entire project are not significant, and are protective of public health and welfare.

TIP, Duke, ExxonMobil DC, and TCC commented that the reduction of emissions limits for NO_x and CO from 250 to 100 tpy, which was intended as a bar on federal NSR changes, is unnecessary and will limit the use of the PBR. Not all project increases at these levels trigger federal NSR and there are exclusions for projects that do trigger NSR. TxOGA objected to the change to the proposed PBR emission caps and the use of Chapter 122, Federal Operating Permits Program, as the basis for defining emission caps for PBRs and recommended changes to the rule text. TxOGA also objected to

the 10 tpy limit for any individual HAP or 25 tpy of all HAPs because it stated these emissions are subject to maximum achievable control technology. As an alternative, if any changes must be made based on the major source definition, TxOGA recommended that they be made using the major source definition in the applicable federal NSR programs, lowering the NO_x and CO limit to 100 tpy in nonattainment areas and retaining the 250 tpy limit in attainment areas (other than the 28 named sources). TxOGA commented that the commission should not decrease the PBR caps for CO and NO_x in §106.4(a)(2) when applied to site-wide caps and recommended that the changes not be made.

The commission does not agree with these comments. The reduction of NO_x and CO limits is not intended to be a direct method of preventing federal NSR applicability. The reduction of NO_x and CO emission limits are adopted since the emission of 250 tpy of those pollutants can no longer be considered insignificant because the Title V definition of major source begins at 100 tpy of a regulated pollutant. As specified in THSC, §382.05196, PBRs are meant to authorize facilities that do not make a significant contribution of air contaminants to the atmosphere. Chapter 106 contains other specific restrictions on projects that are considered major sources or major modifications under federal PSD or NNSR permitting. The definition of major source for named sources under PSD begins at 100 tpy, and for NNSR, major source is defined as 100 tpy of NO_x and CO in currently designated nonattainment areas in Texas. In addition, 10 and 25 tpy are major source thresholds for HAPs.

ExxonMobil Production disagreed with the need to reduce NO_x and CO totals because this reduction will not only limit the use of a PBR, it also limits the ability to use the oil and gas standard permit

because §116.620(a)(4) requires that engines comply with the requirements of the PBR for engines and turbines, forcing some sites to apply for a case-by-case permit. At the very least, ExxonMobil Production proposed that the TCEQ should add the following at the end of the paragraph: "For any standard permit that incorporates this paragraph by reference, NO_x and CO totals shall be 250 tpy each."

The proposed change to the NO_x and CO emissions limits is not intended to be retroactive, and would not apply to existing facilities authorized under the oil and gas PBR or standard permit. Therefore, an entity currently authorized under the oil and gas standard permit is subject to the NO_x and CO emissions limits in place at the time that entity obtained authorization. The commission declines to add the suggested language allowing a 250 tpy emission limit for standard permits, because the general requirements for standard permits in §116.610 prohibit the use of a standard permit for federal major sources, which may apply at levels less than 250 tpy in some cases. The commission is in the process of revising the oil and gas standard permit to address additional authorization issues unique to this industry segment.

ExxonMobil Production expressed the belief that a 100 tpy limit is contradictory to §106.512(6). ExxonMobil Production also commented that the evaluation of NAAQS impacts is a more prudent method of restricting PBR applicability and offers a technical basis for restricting PBR use.

NAAQS are national standards that apply to ambient concentrations and may not directly correspond to the amount of emissions from the facility. Using NAAQS as the basis to determine

potential applicability of PBRs is inappropriate because emissions can be significant even if they do not cause the applicable NAAQS to be exceeded.

EPA commented that the netting provisions of proposed §106.4(a)(1) and (2) should address several items of concern: 1) TCEQ should specify a time period over which the increases and decreases will occur in order to be creditable; 2) TCEQ should identify the criteria used to determine which increases and decreases are used in the netting calculation and the basis for each criterion; 3) TCEQ should specify how the decreases used in the netting will be made practically and federally enforceable; and 4) TCEQ should explain how site-specific netting in a general permit such as a PBR can meet the public participation requirements of 40 CFR §51.161. EPA commented that a general permit, such as a PBR or standard permit, cannot provide for site-specific determinations such as netting.

Authorization of emissions using a PBR does not affect the requirements for netting. The commission has historically allowed netting using PBRs within the context of federal netting guidelines and rules. The time period of five years used for netting is consistent with federal netting rules and guidelines. In order for netting to be considered, the decreases must be at the same source, quantifiable, practically and federally enforceable, and not otherwise relied on. The reduction must have the same qualitative significance for public health and welfare and must not be required by the FCAA, except for reductions required under 40 CFR Part 63. Emission changes must be documented and subject to verification. The decreases will be made federally enforceable by requiring the owner or operator to submit certified netting forms, signed by a responsible official, which document the reductions. PBRs and standard permits are used as an

expedited form of authorization in place of a permit amendment. They cannot be used to authorize a change in emissions that would trigger federal review, therefore emissions authorized under a PBR are not subject to public comment and review. Information submitted to the commission relating to a specific PBR claim or registration remains public information and may be inspected by any member of the public. This netting is not the same as netting performed to determine applicability of PSD and NNSR permitting.

EPA commented on the proposed provisions of §106.4(a)(2) that specify how emission increases at qualified facilities are to be determined. The proposed rule states that the increase is determined as the difference between the projected new emission rate and the previous allowable emission rate of each air contaminant at each facility. EPA stated that the proposed definition is inconsistent with federal NSR requirements that emission increases at major sources be determined on the basis of actual emissions. EPA cited the D.C. Circuit Court of Appeals in *State of New York et. al. v U.S. EPA*, June 24, 2005, where the court ruled that applicability of major NSR to modifications must be based on actual emissions. EPA recommended revisions to provide an alternative calculation method based on actual emissions for major qualified facilities. TCC commented that there should not be two sets of requirements for qualified facilities and non-qualified facilities and that the provision penalizes qualified facilities unnecessarily. TCC suggested that the term be defined as "the difference between the projected new emission rate and the previous allowable emission rate of each air contaminant at each facility." HSC does not support defining the emissions increase at a qualified facility as the difference between the new projected emission rate and the previous allowable emission rate. Instead, HSC commented that the definition should be the difference between the new projected emission rate

and the previous actual emission rate. HSC commented there is no defensible reason to allow qualified facilities without a permit (with a PBR) to have a different emission rate than those who have a permit because it would provide an incentive to not seek a permit unless forced to. Dow suggested that the TCEQ use the same approach for determining the net emission increases authorized under a PBR regardless of whether a facility is a qualified facility or not. Dow suggested that the term be defined as "the difference between the projected new emission rate and the previous allowable emission rate of each air contaminant at each facility."

Due to a wide range of comments concerning the proposed treatment for qualified facilities in §106.4(a)(2), the commission is not adopting the proposed method for determining increases at qualified facilities. The commission will continue to evaluate emission increases based for purposes of determining PBR applicability, on actual emissions, as has been the practice since PBR predecessors were established. The commission has decided to delete the proposed method for the following reasons: 1) many commenters opposed the complexity of two calculation methods for determining emissions increases; 2) the commission is not certain that the proposed method would be protective for unpermitted qualified facilities that have not been subject to a detailed impacts evaluation; 3) the proposed use of a previous allowable emission rate as a baseline may conflict with federal NSR requirements concerning tabulation of emission increases; 4) the difficulty of evaluating whether or not a claimed qualified facility actually meets the definition of a qualified facility; and 5) the difficulty in establishing the "previous allowable" emission rate at some sources where the applicable authorization does not clearly establish a specific emission limit. Although the commission has withdrawn the proposed calculation method

for qualified facilities, the commission is retaining language in §106.4(a)(2) to facilitate the use of netting to meet PBR limits. Applicants must still demonstrate, using PSD and NNSR netting, that the claim will not trigger federal NSR.

EPA commented that TCEQ should define the phrase "group of related facilities, and related increases," which is used in a number of proposed sections and subsections, including §106.4(a)(1) and (4) - (7), (e), (f)(1) - (7), and (g), and §116.615(a) and (a)(2)(A). TxOGA commented that the phrase "group of related facilities and related increases" is inappropriate and recommends that it be deleted.

The commission is not revising the rule to include a definition of "group of related facilities" because that term is covered by individual applications of the term "facility." The term "facility" is defined in both the TCAA and §116.10(6) as a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. Because each piece of equipment can be a facility in itself, it often takes more than one facility (a group of facilities) to make a product or multiple products.

All emissions increases resulting from a change made under a PBR must meet the requirements of the PBR as well as §106.4. Since a change in one facility may cause emissions increases from other associated equipment, those increases must be included in the PBR claim. For example, a production facility, such as a pressure reactor which has primarily fugitive emissions, will not

have a large emission increase for a throughput increase. However, the reactor will require more material input from upstream facilities, such as other production facilities supplying the input to the reactor and will generally increase material flow to downstream facilities, such as storage tanks, waste and wastewater facilities, and loading facilities. The total emission changes need to be evaluated to ensure that all the emissions associated with the production increase are within specific PBR and §106.4 limits and are protective of public health and welfare. This method of evaluation is consistent with other federal and state rules and is how PBR claims and permit applications have historically been reviewed. In addition, all PBR claims are evaluated to determine that PSD or NNSR permitting applicability is not triggered.

TxOGA recommended that in delineating the scope of a PBR, an operator be allowed to take into account related decreases in emissions at the regulated entity.

The commission agrees that an owner or operator may take into account related decreases in emissions at the regulated entity. To be considered, the decrease must be of the same air contaminant, be at the same site, quantifiable, practically and federally enforceable, and not otherwise relied on to counter other emission increases. The reduction must have the same qualitative significance for public health and welfare and must not be required by the FCAA. The decrease must be made federally enforceable through appropriate netting documents and certification.

HSC expressed concern about allowing up to 100 tpy of NO_x for a PBR. HSC noted that in the Houston-Galveston-Brazoria Ozone Nonattainment Area a major source should be 25 tpy or more of NO_x. The HSC commented that since NO_x is one of the air pollutants the TCEQ has targeted for reduction, a 25 tpy limit should be implemented.

HSC is correct that under the one-hour ozone standard, 25 tpy of NO_x emissions was considered a major source in severe nonattainment areas, such as Houston. However, the one-hour standard has been revoked. Under the current eight-hour standard, EPA has classified the Houston area as a "moderate" nonattainment area. In "moderate" ozone nonattainment areas like Houston, the major source level for NO_x is now 100 tpy. The proposed 100 tpy NO_x limit is a significant reduction from the previous limit of 250 tpy. A limit of 25 tpy would be unnecessarily restrictive for purposes of the §106.4 emission limit. In particular areas with nonattainment concerns, SIP rules, such as Chapter 117, Control of Air Pollution from Nitrogen Compounds, will provide any additional needed control for NO_x. Applicants must still demonstrate, using PSD and NNSR netting, that the claim will not trigger federal NSR.

HSC opposed the proposed change that does not define CO and methane as air contaminants because these gases cause some of the greatest health and welfare problems for people due to their role in increasing overall world temperature (global warming).

The commission appreciates the commenter's concern regarding CO and methane gases, but no changes were made to the definition in response to this comment. Although CO and methane are

air contaminants, no NSR authorization is required. On January 18, 2002, the commission considered a report prepared by commission staff regarding greenhouse gases that was prepared in response to a decision of the commission on August 25, 2000. The commission adopted the executive director's report, which included recommendations related to greenhouse gas reduction incentives, such as expanding the commission's pollution prevention incentive programs to include CO and other greenhouse gases; actively promoting and expanding programs such as those endorsed by Senate Bill 5 for increased energy efficiency and conservation for governmental, residential, public, and commercial and industrial sectors; and expanding and actively promoting the use of clean technology and renewable energy resources, and carbon sequestration. The commission also adopted recommendations relating to collecting information about greenhouse gases. These recommendations are included in a summary of the meeting dated February 8, 2002. However, the commission did not direct staff to make any specific changes with regard to permitting of these contaminants.

Devon suggested that, to be consistent with federal permitting reviews, all criteria pollutants, including VOC, SO_2, and PM_{10}, be allowed to be emitted up to the major source threshold of 100 tpy under PBR. Similarly, USAF-Regional suggested that the TCEQ consider allowing 40 tpy for VOC to be consistent with PSD rules.

Devon's and USAF-Regional's suggestions concerning increasing the limits for VOC, SO_2, and PM_{10} might result in protectiveness issues because current PBRs were evaluated based on a maximum of 25 tpy of these compounds. Any increase in those emission limits would require

additional review to ensure that all PBRs remain protective of public health and welfare. Although the commission has not implemented the suggested rule change at this time, the commission will explore the possibility for future revisions of Chapter 106, after all current PBRs have undergone updated protectiveness reviews, which is part of the PBR Study.

TxOGA recommended the creation of §106.4(a)(2)(D) and suggested language that will make it clear that fugitive emission increases only from ancillary piping, valves, and connections (up to 10% of existing fugitive emissions) will not be considered emissions increases. TxOGA stated that this addition is necessary because fugitive emissions are an estimate only and recommended that there not be a requirement for a new authorization by PBR or any other method.

The commission disagrees with this suggestion that fugitive emissions be excluded. Fugitive emissions are emitted from facilities. Under state law, emission increases from a facility must be authorized. In addition, fugitive emissions are often released under conditions that result in less dispersion and have proportionally higher impacts as compared to stack emissions. Therefore, it is necessary that these emissions be fully authorized and accounted for, and the commission is not making the suggested change. Individual projects involving fugitive emissions can still use PBRs, or other types of authorization.

TxOGA commented that it is inappropriate for §106.4(a)(3) to use a Chapter 122 Title V definition for a "site" when permitting (PBR, standard permit, and NSR) for construction or modification of facilities

is done on the basis of "regulated entity," as defined in Chapter 101. TxOGA recommended that "site" and the reference to Chapter 122 be replaced by "regulated entity."

The commission disagrees with the suggested change. Permitting is based on the concepts of facility, facilities, related facilities, and related increases, which may involve equipment throughout a given site. Many aspects of permitting are evaluated on a "site" basis, to ensure that all sources of pollutants that may impact surrounding areas are accounted for.

Dyess AFB and USAF-Regional commented that the cumulative emissions restrictions language has changed from ". . . has been subject to public notice and comment . . ." to ". . . has a current permit …" and this change will effectively decrease a site's PTE to 25 tpy for VOC, SO_2, and PM_{10} for sites that do not currently have an NSR permit but have been previously subject to public notice and comment for a voided permit. Dyess AFB suggests the language could be ". . . the account has been subject to public notice procedures per 30 TAC Chapter 116 and is {as of some start or construction date} classified as a high or average performer per 30 TAC §60.2." Duke, ExxonMobil DC, ExxonMobil Production, GCA, TCC, TIP, and TxOGA commented that §106.4(a)(3) changes the "public notice" test for when a site must keep its PBR facilities (in the aggregate) below the prescribed individual emission limits. Duke and GCA commented that a permit can be withdrawn or superseded by another form of authorization, but the public notice test should be retained as it currently exists. TCC proposed to replace the phrase "a current permit issued" with "gone through a public notice" in this provision. TIP and TxOGA requested removal of this language but also requested that in lieu of omitting the "current permit" test that the commission consider providing a transition period for

facilities whose permits have lapsed or expired. URS commented that several facilities have had a source permitted simply to go through the public notice requirement, thus allowing them to claim the higher emission limits. URS also noted that, in the past, these permits were allowed to expire and the sources were still able to claim the higher emission limits because they had gone through public notice, but according to the new wording, these facilities that have had permits would need to permit another source at the site to have an active permit. URS suggested creating a mechanism that allows PBR facilities to go through public notice without obtaining a permit.

State regulations require any new significant source to comply with BACT, have public participation, and be subject to an impacts evaluation. The proposed requirement to have a current permit will ensure that these factors are met through periodic amendments and renewals. A site that has emissions above the 25/100/10/25 levels is significant and should satisfy these factors. The commission declines to make the suggested change referencing compliance history, since the change is not based on current rules or statutes. Sending a PBR through public notice defeats the intent of a PBR being an expedited authorization method for similar insignificant facilities. The commission is changing §106.4(a)(3) to allow an owner or operator, who is seeking to obtain a PBR authorization, a one-year period from the rule's effective date after which the owner/operator must have a permit or application for a permit pending under Chapter 116 for at least one facility at a site. An owner or operator may register for a PBR as long as an on-site facility is in the process of obtaining a permit. Should the owner or operator withdraw the application without the issuance of a permit, if the permit is voided, any PBR registration claimed after the effective date of this rule will become void.

ExxonMobil Production suggested public notice requirements should be expanded to Chapter 122 because a Title V public notice is more comprehensive in scope than a Chapter 116 public notice. Zephyr commented that FOPs should be included in the list for permit types that satisfy the PBR requirement that the site have a current permit in order to use PBRs. Zephyr also commented that FOPs offer more opportunity for public comment and hearing, and effect change in a permit because of the open access to appeal to EPA and the ability to request reopening for cause.

The commission declines to expand the allowable types of public notice to include Title V permits, because public participation under Title V does not provide for an opportunity for a contested case hearing, which is a requirement under state regulations for most initial permits and all amendments.

Commenting on §106.4(a)(4), TxOGA recommended that construction or changes to one or more facilities that do not result in an increase in actual emissions not trigger a requirement to meet the new emissions ceiling.

The commission is not changing the rule in response to this comment. Changes in method of control, the character of emissions, as well as emission increases require reauthorization. Any change requiring a new authorization also requires that the facility use the most current version of the applicable authorization method. It should also be noted that amended §106.4(a)(1) establishes emission limits for net project increases.

HSC noted that §106.4(a)(7) does not mention how an entity should submit a request to obtain the one-time, 18-month extension to commence construction. HSC supported requiring the request be in writing and include the reason for the request, who made the request, who approved the request, and why the request was approved, so the TCEQ can maintain a record of the request.

The commission agrees that the request be made in writing and is changing the rule. Normal business practice is that all company letters are signed or have a contact name, and TCEQ reply letters have a reviewer name and phone number along with the name of the person signing the letter. Normal permit procedures include a technical review fully documenting the request and include any justification/reason for the commission's decision to recommend or deny the request. The commission's normal document procedures will preserve the record, including the reason for the decision, and who authorized the decision.

Commenting on §106.4(a)(7), TxOGA recommended that the commission insert "prior to construction" following "For any permit by rule that requires registration."

The commission is changing the rule in response to this comment. The change is justified because some PBRs require no registration or only require registration or notification after the authorized change has been made, and those instances were not intended to be affected by the proposed rule.

TxOGA asked that the commission affirm that the deadlines and the opportunity to use an affirmative defense in the interim also apply to §106.4(b).

The commission confirms that the deadlines in §101.222(h), Demonstrations, and the opportunity to invoke the affirmative defense until the appropriate deadline, apply.

TxOGA commented that including predictable MSS emissions in PBRs will result in some regulated entities becoming Title V sites and requested that the TCEQ affirm that an operator would have up to a year to submit a Title V application for the site.

The commission is aware that certain sites may become major for Title V with the authorization of MSS, but disagrees that the operator has one year to submit a Title V application. In accordance with §122.130(b)(1), PTE must be recalculated and a Title V application must be submitted for sites with emissions exceeding major source thresholds, upon authorization of new emissions including MSS.

TxOGA commented that MSS emissions are not always equal to or less than the normal operating emissions, and stated that some well controlled oil and gas sites authorized under §106.352, Oil and Gas Production Facilities, have MSS emissions that may be more than, and can be different in character to, normal operating emissions.

The commission agrees with the comments, however, §106.352 limits have always been considered to include MSS, and the limitation of MSS emissions in §106.352 is based on public health protection concerns. If the total emissions, including MSS, exceed the amount allowed by

the PBR, the emissions are unauthorized, and the PBR is not the appropriate authorization method.

TxOGA recommended that §106.472, Organic and Inorganic Liquid Loading and Unloading; §106.473, Organic Liquid Loading and Unloading; and §106.478, Storage Tank and Change of Service, be added to the PBRs listed in §106.4(b).

The commission does not agree with the comment. These PBRs cover a wide variety of different sources and a wide variety of compounds, and the commission does not consider the MSS emissions to be of the same quantity on a short-term basis or controlled in the same amount or manner as the production emissions.

GCA commented that emissions may increase from out-of-service units in multiple parallel wastewater treatment units if one of the units is out of service. GCA commented that previous permitting practice may not have addressed emissions from various valid scenarios.

The commission acknowledges that the water and wastewater treatment PBR may not have considered all MSS scenarios when originally developed. The character and quantity of emissions may be different from operational emissions. The rule has been revised to remove §106.532, Water and Wastewater Treatment, from the list in §106.4(b).

TIP, Duke, ExxonMobil DC, and TCC stated that the §106.4(e) requirement that all facilities authorized by PBR are not exempt from any other regulation or statute that may apply should be changed to include the language "except during MSS as governed and addressed by Chapter 101 of this title." TxOGA commented that MSS activities, when authorized by Chapter 101 or PBR in Chapter 106, can override normal regulatory limits (e.g., opacity), and requested clarification that some regulatory requirements for normal operations may not apply during MSS activities.

The commission is changing the rule in response to this comment to remove the proposed language stating that PBR authorized facilities are subject to other state rules. The inclusion of this language is unnecessary. MSS emissions are part of normal operations and are subject to all applicable regulations and statutes. The commission disagrees with TxOGA that regulatory requirements for normal operations are superceded by any permit authorization.

Dow commented that the proposed §106.4(f)(4) should be deleted from the rule, and that the commission has existing authority to limit the use of PBRs for a given permitted area by simply inserting a special condition into the appropriate NSR permit. Dow stated that there may be unintended consequences from the application of this rule that unduly restrict operational flexibility.

The commission is not changing the rule in response to this comment. The rule is designed to prohibit use of PBRs in cases where a permit review has determined that the use of a PBR may result in unacceptable off-property impacts. This provision is a rephrasing of an existing requirement located in §106.4(a)(7) and is not a new requirement.

The HSC supported §106.4(f)(5).

The commission appreciates the support.

Dow suggested that the commission clarify in §106.4(f)(5), that a PBR can be used to authorize emissions controls or other practices that may not achieve the same level of emission control during times of MSS activities.

The commission agrees that PBRs used to authorize certain transitory or short-duration MSS activities in certain situations may not achieve the same control as steady-state production facility emission controls. The commission has revised the rule to clarify that §106.268 and §106.269 can be used to authorize MSS emissions that cannot meet permitted limits and control specifications for production.

HSC supported §106.4(f)(6).

The commission appreciates the support.

ACES, Dow, BP, Celanese, ConocoPhillips, CCJ, Duke, ExxonMobil DC, GCA, Shell, TIP, TCC, and TxOGA objected to the use of the APWL and believe that the proposed limitation of §106.4(f)(6) to prevent the use of a PBR for a material on the APWL is impractical and has the potential to create thousands of additional permit amendments each year in areas for which minor changes are more

appropriately addressed by PBR. The commenters objected to the fact that the public has no mechanism to comment or object to the listing, that it is unclear at what level a pollutant must be present in a mixed stream to be of concern, what the geographic scope of the listing is and how it is justified, and that the potential for confusion and change without notice creates an unnecessary and avoidable burden on affected industry. TIP stated that PBR emissions limits, ESL tables, and other protections are adequate to prevent adverse impacts from a specific compound in areas with elevated background levels. BP, Celanese, ConocoPhillips, CCJ, Duke, GCA, Shell, and TxOGA commented that the TCEQ should delete the proposed APWL because it is unnecessary due to other stringent PBR limits. ACES, Dow, and TCC stated that if a pollutant watch list is to be used, a *de minimis* threshold of emissions for all process equipment should be established, below which speciated emission estimates are not required. ACES commented that the absence of a *de minimis* limit and the far-reaching nature of the proposed changes will have much greater impacts across watch areas than anticipated, especially for facilities that would normally qualify for a PBR. ACES noted this is especially the case for areas where benzene is on the APWL, in which any increase would effectively eliminate authorization for very small amounts of benzene in natural gas, gasoline, and many other refinery products, as well as other common materials that include or emit benzene in limited amounts. ACES also stated that the information about the criteria for including pollutants on the APWL and the procedures that discuss the addition and deletion of chemicals from the list be made available for public review. Haynesboone commented that §106.4(f)(6) would preclude qualification for a PBR if there would be an increase in one or more applicable APWL compounds and that adoption would elevate the APWL to a rule under state law, requiring the commission to use rulemaking procedures each time the APWL is modified. Haynesboone commented if there are concerns about problems with overall air quality the focus should

be on significant sources and noted that §116.115(c)(2) already allows the commission to establish conditions in a permit preventing the use of a PBR to increase emissions of concern.

The commission is changing the rule to specify that PBRs may be used to authorize an APWL pollutant for qualified facilities if the PBR claim is registered, there is no net emissions increase, and there is no exceedance of a state or federal air concentration standard or ESL for that pollutant from the site. Emission rates from intraplant trades involving differing stack heights and distances must be adjusted based on full air dispersion or screening modeling or the X-values and modeling procedures specified in §106.261. This would require that emission rates be adjusted to account for changes in stack height and distance. For example, if emissions from a stack were traded for fugitive emissions closer to the receptor, the emission rate would be adjusted downward. Additionally, the commission concurs that the APWL areas should be more clearly defined. The executive director will develop and provide more specific boundaries for the watch list areas. The use of the APWL is appropriate and necessary to protect areas within the state that have detected elevated levels of certain specific pollutants. The commission reviews ambient air monitoring data from mobile monitoring and fixed-site monitoring networks to assess the potential of monitored concentrations to cause adverse health effects. Specific chemicals in locations that are a concern for adverse health effects are placed on the APWL. The executive director's restrictions of the use of PBRs in APWL areas will help the commission attain its goal of improving air quality in these areas. Emissions of the pollutant of concern can also be authorized, and will be subject to health effects reviews, using the case-by-case air permitting processes.

With respect to other specific issues raised by these comments, the commission does not support the creation of a *de minimis* level because any increase of a specified pollutant in watch list areas could result in impacts that are not protective. The commission acknowledges that many facilities emit benzene. However, in specified areas the need to perform a detailed review of emission increases justifies the inconvenience of eliminating PBRs to authorize increased emissions of benzene. The executive director will provide a detailed procedure on how the APWL is developed and revised on the commission's Web site. This procedure will include a discussion of the criteria for addition to, and deletion of, pollutants and areas from the list. The executive director will provide notice of changes and opportunity to comment on the APWL. More information about the APWL is available on the commissions's Web site at: *http://www.tceq.state.tx.us/implementation/tox/AirPollutantMain/APWL_index.html#who*.

Under THSC, §382.05196, the commission is authorized to adopt PBRs if it is found on investigation that the types of authorized facilities will not make a significant contribution of air contaminants to the atmosphere. The commission may also establish by rule the terms and conditions for a PBR. The APWL will be used as one of those PBR terms that maintains the authorized emissions at insignificant levels. The commission will not require rulemaking to revise the APWL so that the executive director may quickly update the list based on changing conditions.

HSC supported §106.4(f)(7).

The commission appreciates the support.

TIP, CCJ, Duke, ExxonMobil DC, GCA, and TCC objected to the exclusion in §106.4(f)(7) that prevents the use of a PBR to authorize a project where there is no construction, physical change, or change in method of operation to an otherwise authorized facility or group of related facilities because PBRs have for many years authorized newly discovered emissions, changes in operation that fall short of the "change in method" definition, and amendment true-ups. Dow urged the commission to consider the use of PBRs to authorize emissions that are discovered as a result of vent gas testing or continuous emission monitoring. Currently, there is not a process other than permit amendment for authorizing small levels of emissions that may be discovered during emission testing or continuous monitoring. ExxonMobil Production suggested that for clarity the first sentence in this paragraph should read ". . . emission increases above the limits in a PBR, PI-7-CERT, PI-8, or APD-CERT may not be claimed under this chapter." Current language suggests any increases in normal emissions, even below established limits, are not allowed.

The commission is revising §106.4(f)(7) for clarity but is retaining the proposed concept. When additional emissions are discovered at a permitted unit, through the use of sampling or monitoring, it is appropriate that those additional emissions be authorized by amending the original permit authorization. The discovery of additional emissions does not constitute a new facility or a change to a facility, and therefore, the owner/operator is not eligible to claim a PBR. Emissions that should have been, but were not, included in the initial BACT and effects review

may invalidate the original permit review. A subsequent authorization of the emissions by PBR would not correct this situation and could constitute circumvention.

HCPHES objected to the QUAN exclusion from the general prohibition contained in §106.4(f)(7) and did not support the creation of the QUAN release authorization mechanism. TxOGA commented that the proposed prohibition creates a major problem when there is a need for an immediate increase in throughput at a facility (e.g., a surface facility associated with a pipeline or a bulk fuels terminal) with no other construction, physical change, or change in the method of operation, and that the use of PBR is the only reasonable method to authorize the increase. TxOGA suggested language to replace the proposed prohibition in §106.4(f)(7).

The commission is not making a change to the rule in response to this comment. QUAN emissions have been determined by the commission to be predictable and consistent with good operational practice and engineering practice. Therefore, QUAN emissions should be eligible to be authorized as an aspect of normal operation. The rule does not affect changes that result in an increase in throughput. Such a change would be considered a change in method of operation, and under §106.4(f)(7), an operator would not be prohibited from seeking authorization under a PBR.

TIP, Dow, Duke, ExxonMobil DC, GCA, Haynesboone, TCC, and TxOGA commented the proposed requirement in §106.4(h) that new owners notify the commission and meet new certification requirements was more stringent than similar requirements in Chapter 116, unnecessary, and overly

burdensome. TxOGA recommended that the certification requirement be limited to PBR registrations and certifications instead of to every facility authorized by PBR. Haynesboone stated that the applicability of §106.4(h) should be restricted either to those facilities for which the applicable PBR requires notification for the original installation, or to those facilities for which registration has been submitted and approved by the TCEQ. Haynesboone commented that §106.4(h)(3) makes §106.4(h)(4) and (5) redundant, and that §106.4(h)(4) could be construed to prevent a new owner from using compounds that were within the scope of the PBR when the original owner qualified for the authorization. Alternatively, TCC proposed allowing up to 90 days for certification, and Dow suggested that the TCEQ should allow up to 180 days after changing ownership (consistent with Title V Deviation reporting cycles) to perform the certification.

The commission has reexamined these proposed requirements and is not adopting them.

TCC commented that voluntary registration as proposed in §106.4(i) (now §106.4(h)) should be reviewed as requested by the registrants and that internal resource limitations should not drive this restriction for the regulated community.

One intent of the PBR study, of which this rulemaking is a part, is to streamline the permitting process and focus commission resources. The commission is limiting the number of reviewed registrations. The commission expects a substantial increase in work load as it authorizes MSS emissions and will need to manage its resources.

HCPHES supported the proposed changes to §106.6.

The commission appreciates the support.

TxOGA suggested language for a subsection in §106.6 that would state that a Form PI-7-CERT does not have to be signed by a responsible official unless the certification is for the purpose of determining applicability of the FOP Program.

The commission is not changing the rule in response to this comment. The PI-7-CERT form is for registering and certifying the emissions for federal purposes. The executive director determined that certification requires a signature by a responsible official.

HCPHES supported the proposed change to §106.8.

The commission appreciates HCPHES's support of the proposed change.

TCC commented that §106.8 lists unnecessary recordkeeping requirements for minor sources and if the intent is to justify Title V exemption, the requirements should be included in Chapter 122.

The commission makes no changes in response to this comment. The proposed recordkeeping within Chapter 106 is necessary because many small facilities that use PBRs as authorization may not recognize the need to review Chapter 122 and all other requirements associated with the FOP

Program. The requirements of §106.8 are intended to provide the simplest method possible for small sources to demonstrate non-major status. In addition, records are necessary for determination of compliance with any individual PBR limits.

HSC requested that the commission modify §106.8(b) and insert the language found in §106.6(f), "immediately upon request" to prevent delays for records requested by an investigator.

The commission agrees with the comment and is amending the language in §106.8(b) to indicate that information must be provided to the commission or local air pollution programs immediately upon request.

Commenting on §106.8(b), TxOGA suggested language that a physical copy of the applicable PBR does not have to be maintained at the facility but instead be accessible through electronic or other means.

The commission makes no changes in response to this comment. It is critical for owners and operators of facilities to know the contents of and be able to provide a copy of each facility's authorization upon inspection. This requirement is consistent with the requirement that a copy of a permit be kept on site or, if an unmanned site, at an office in Texas having day-to-day control of the site. The rules do not preclude the use of electronic records of authorizations or associated recordkeeping.

Commenting on §106.8(c)(5), TxOGA stated that because many types of operations have emissions that vary from month to month, it is difficult to demonstrate continuous compliance on a rolling 12-month basis. TxOGA recommended that the effective date for keeping records be the date the rule goes into effect, and that "any consecutive 12-month period" be replaced by "the preceding calendar year," as the rule stated before it was amended in November 2001.

The commission makes no changes in response to this comment. The recordkeeping requirements of §106.8 were developed because it is necessary for facilities operating under a PBR to be able to continuously demonstrate compliance. This requirement is necessary for facilities operating under a PBR, regardless of when the PBR was claimed. A facility must demonstrate continual compliance with individual PBR limits and the limits of §106.4. The rules were adopted with the rolling 12-month recordkeeping requirement for consistency with Texas Government Code, §311.005, which provides the definition of a year to be 12 consecutive months.

TxOGA proposed the deletion of the phrase "or potentially subject to" in §106.8(c)(6) because compliance with this paragraph would be impossible since the language is so broad. TxOGA also recommended that "all" be replaced by "necessary to demonstrate" regarding the records that must be maintained to demonstrate compliance. Dow proposed the deletion of the new recordkeeping requirements for minor sources in §106.8(c)(6), and suggested that the existing records are adequate to determine major and minor source status under the Title V Program.

The commission makes no change in response to this comment. Owners and operators must be able to demonstrate that facilities are not subject to applicable federal requirements upon request. The recordkeeping requirement is specific to federal requirements to which a facility is subject or potentially subject. Many federal requirements specify the necessary recordkeeping requirements for regulated facilities and exempted facilities. All records required by federal law must be kept.

TIP, Duke, ExxonMobil DC, GCA, and Haynesboone commented that recordkeeping requirements for non-Title V sources in §106.8(d) exceed what is necessary to demonstrate non-major status and impose a burden to small and often unmanned sites. Haynesboone stated that the proposed rule is another example of an intrusive provision for which other, existing laws are adequate and which provides, at best, minimal benefits compared to the extensive paper work, recordkeeping, and other requirements that would be imposed on the regulated community. The proposal seeks to use the PBR system as a tool for enforcement of Chapter 122 operating permit requirements. Haynesboone commented that the PBR system regulates insignificant sources, and that the proposal imposes requirements that are more stringent than those on sites containing only significant, permitted sources. PBRs cover a variety of sources including those in restaurants, service stations, dry cleaners, laundromats, and even residences, all of which fit the definition of "site" in Chapter 122. Existing §106.8 requires owners of PBR-authorized sources to maintain records demonstrating qualification for the PBR. There is no reason for the TCEQ to require additional recordkeeping, to demonstrate that other requirements, such as Chapter 122, are not applicable. ExxonMobil Production commented that §106.8(d)(3) is overly burdensome. ExxonMobil Production commented that §106.8(d)(5) is overly burdensome and appears

to suggest that VOC testing is required on a daily basis for coatings and solvents. ExxonMobil Production commented that at a minimum this requirement should be targeted at specific industry types that have processes requiring significant uses of these materials.

The commission disagrees with the comments. The recordkeeping requirements do not exceed what is necessary to demonstrate non-major status, and the specified records are only examples of the types of records that may be maintained. The proposed rule does not preclude an owner or operator from using other records to document non-major status. The commission has revised the language of §106.8(d) to more clearly indicate that other records are acceptable. The commission disagrees that the keeping of these records imposes a burden on small and often unmanned sites. The records required do not exceed what a site would typically need in order to ensure compliance with the PBR or any applicable certifications. If the facility normally operates unattended, these records do not need to be kept at the site but can be located at a nearby manned office within Texas. Many of the PBR-authorized facilities given as examples may still have the potential for major source status.

Many owners or operators of small sources operating under PBRs may not be aware of the requirements associated with the FOP Program. The recordkeeping is necessary to highlight the potential applicability of the program; provide a simple method for owners and operators to demonstrate and support claimed non-major status; and provide a mechanism for improved enforcement on small sources, which have often been found to maintain insufficient records to demonstrate compliance.

TxOGA recommended that the TCEQ allow records to be maintained electronically to demonstrate that a site is not a major source.

The language does not prohibit records from being maintained electronically, as long as they can be produced upon request.

TxOGA commented that the five-year recordkeeping requirement is not mandated by Chapter 122 and that the current two-year requirement in §106.8(c)(5) is adequate. TxOGA also commented that the requirement in §106.8(d) to maintain records "to the extent necessary to demonstrate that the site is not a major source" is an adequate description of the records that must be kept to meet the regulatory requirement and that the explicit listing of the minimum records should be deleted.

The five-year requirement was included because it is consistent with recordkeeping requirements for purposes of the FOP Program.

HCPHES and the HSC supported the amendments to §106.50.

The commission appreciates the support.

TCC commented that the TCEQ should provide an option to credit the refunded fee to the air account for later use, and noted that some companies have no system in place to deposit refunded checks.

The commission is changing the rule in response to this comment to allow crediting of an account.

GCA made a general comment that §106.261 should be made more flexible to enable its use for smaller emitting sources.

The commission realizes that the new §106.261 is less flexible for some chemicals than the previous §106.261 and §106.262. However, in order to demonstrate protectiveness for an authorization that addresses a wide scope of facilities, the commission necessarily used a conservative set of assumptions. Facilities with low emissions, dependent on the toxicity of the contaminant, may cause adverse off-property impacts unless the short-term emissions are restricted.

BP, Celanese, Shell, TI, and GCA commented that the proposed changes will make several far-reaching changes to the existing PBR program that will affect all projects, not just MSS and QUAN, and that in combination, the changes will defeat the purpose of providing meaningful alternatives to case-by-case permitting of MSS and QUAN emissions. BP, Celanese, Shell, TI, and GCA commented that the changes will result in small changes being addressed by permit amendments, greatly increasing the work load for sites and for the TCEQ.

The commission acknowledges that §106.261 will authorize fewer emissions in some cases, but this is a result of the protectiveness review of the PBR and its use as a limiting mechanism on the authorization of MSS and QUAN. The commission expects a work load increase, but certain authorizations are appropriately accomplished through a case-by-case review.

HCPHES recognized the conflicts in existing §106.261 and §106.262 and supported the proposal to replace them with one PBR. HCPHES supported the updated calculation methodology and the scientific peer review of ESL methodology that is currently under development, as long as the staff-developed ESL for this PBR adheres to the peer-reviewed methodology.

The commission appreciates the support of HCPHES.

ACES commented that the use of three different types of agency submittal (notification, certification, and registration) is complicated and unclear and suggested the rule should be revised to simplify notification requirements and clarify which forms or data must be submitted.

The commission developed and proposed a tiered system of notification, certification, and registration to reduce paper work by allowing very small sources to forego registration requirements and allowing large sources, with multiple uses of §106.261, to certify once per year. The commission is further simplifying these requirements by eliminating the requirement for notification of projects with annual emissions of less than five tpy. In addition, the commission revised the rule to specify that applicants may voluntarily submit §106.261 registrations, the reviews of which will be done at the discretion of the Air Permits Division director. The required forms for certification and registration are available on the commission's Air Permits Division Web site at *http://www.tceq.state.tx.us/permitting/air/nav/nsr_forms_forms.html.*

ACES commented that the limitations on annual emission rate increases are not clear. ACES stated that many changes, such as an increase in annual throughput for a storage or loading operation that does not change the maximum hourly rate, will result in an increase in annual emissions without a corresponding increase in hourly emissions. If a change results in an increase in annual emissions but no increase in hourly emissions, and the change involves a chemical other than benzene, ethylene dichloride, or hydrogen chloride, ACES commented that the TCEQ should clarify the emission limits of §106.4 are the only applicable emission limits.

The example provided by the commenter requires authorization even if there is no increase in hourly emissions. Authorization under a PBR cannot be accomplished simply through the application of §106.4. Authorization must be established through the claim of a specific PBR and any emission limits of the specific PBR apply instead of the general limitation of §106.4.

TIP commented that §106.261(a)(1) prohibited interpolation between stack heights and suggested allowing it. ACES, Duke, and ExxonMobil DC, and TCC believe that due to the prohibition on interpolation in the proposed §106.261, Table 1 is overly restrictive. TxOGA recommended the deletion of the prohibition on interpolation in determining the "X" value from Table 1. Source suggested allowing interpolation of the distance values. Dow suggested that the rule should allow for interpolation of Table 1 and/or provide an equation from which the table "X" value was derived to better determine the maximum allowable emission rate. TCC suggested that the TCEQ should provide an equation from which the table was created so a facility can accurately determine the qualification of the change. ACES commented that there are too few intermediate or short distances provided,

especially at short distances. ACES also commented that the PBR should either allow interpolation or should replace Table 1 with an equivalent equation. TCC also commented that the minimum distance of 100 feet may be impossible to meet for facilities in commercial locations using the proposed Table 1.

The commission has changed the rules to allow interpolation of the Table 1 distances and stack heights and has established 25 feet as the minimum distance for low-level fugitives. This change will allow the maximum amount of emissions to be authorized while maintaining protectiveness, and interpolation will provide additional flexibility. The minimum distance requirement of 100 feet for stack emissions is maintained to avoid the potentially harmful effects of downwashing on receptors.

TIP noted that the stack heights given in Table 1 only go to 30 feet while some sites have stacks in excess of 100 feet. TIP suggested including X values for higher stacks in Table 1. Dow, RMA, Source, TCC, and TxOGA commented that the stack height values should be expanded. Dow and TCC commented that the table should be expanded to include a stack height of 40 feet, 50 feet, and 60 feet. RMA stated that the stack height value be expanded up to 50 feet. Source commented that the stack height value should be expanded to 60 feet; and TxOGA commented that the stack height value should be extended up to 100 feet. Source also suggested adding distance values for 150 feet and 250 feet, or to add more stack heights. Dow also stated many of the emission sources that may use a PBR will discharge to the atmosphere at these heights above grade or higher. ACES commented that the

absence of stack heights greater than 30 feet is equally unnecessary and arbitrary, with no environmental benefit.

The commission has revised Table 1 to include stack heights of 40, 50, and 60 feet and to allow interpolation for stack heights and distances between points (such as between 150 feet and 250 feet). This change will allow facilities to authorize more emissions under this PBR, while ensuring protectiveness. These heights were based on modeling considerations and are consistent with the stack heights in the Air Permits Division's guidance document RG-324, which includes stack heights up to 60 feet.

Dow commented that the applicant should also be allowed to use an average "stack" height for fugitive emission sources and not be constrained to use a default of 3 feet for "stack" height.

The commission makes no change in response to this comment. Fugitive emissions do not exit a stack. Because fugitive emissions have lower dispersion rates than pollutants exiting a stack, the defaults of 3 feet and 10 feet were established to be more representative of emissions for the protectiveness review of §106.261.

TIP, Dow, Duke, ExxonMobil DC, GCA, TCC, and Zephyr commented that the §106.261(a)(1) requirement to measure from the closest emission point may be excessively restrictive in that a minor source near the property line may skew the emissions rate to prohibit the use of the PBR. Dow and TCC also commented that when there are multiple emission points, each emission point should be

evaluated on its own. TCC suggested that only an annual emission rate should be applied to the sum of the emissions from multiple emission points. Zephyr suggested that there should be an option to provide a centroid for these types of sources with the requirement that the registration include a specific demonstration of the centroid calculation. TxOGA suggested language that, in its estimation, will allow a better representation of the impact of emissions on actual or potential receptors by using the emissions-weighted mean distance rather than the closest distance. ACES recommended that the language of proposed §106.261 be altered to allow the use of a ratio of allowable emission rates at different emission points to maintain protectiveness without sacrificing the utility of this PBR. ACES commented that the ratio would incorporate both differences in stack heights and differences in distances to arrive at the most accurate allowable emission rate without reducing protectiveness.

The commission has changed the rule in response to these comments. In some instances, the facilities that have the highest emission rates are not the facilities that are located the closest to receptors. Using the compound-specific weight fraction methodology, now included in the rule, will enable Table 1 to be used in a manner that is more representative of the potential impact of emissions.

TCC commented that this section should not use "distance to the property line" but should use "distance used" instead.

The commission makes no change in response to this comment. The PBR specifies that distance to the property line or receptor be used. Property line must be used if an NAAQS or a state

standard requires a specific concentration off the property. Receptor should be used for all other air contaminants to ensure protectiveness. The rule specifies which distance applies to each equation. The distance to the property line or the nearest receptor is a function of the specific standard that needs to be applied. The rule methodology is consistent with existing NSR permitting requirements, and the rule language and methodology will provide more clarity than the term "distance used."

Martin Marietta commented that the equation in proposed §106.261(a)(1)(A) (now §106.261(a)(5)(A)) to calculate TSP is based on the current standard for TSP as specified in 30 TAC Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, and noted that the commission has proposed the repeal of these TSP standards. Martin Marietta requested that the commission remove the equation for use in calculating the allowable TSP.

The commission has found that the PM standards provide adequate protection of public health and welfare and has revised the rule language to eliminate the TSP requirement.

HSC noted that $PM_{2.5}$ is an NAAQS pollutant and has the greatest effect on health and welfare of any particulate. HSC requested that the commission specifically apply §106.261 to emissions of $PM_{2.5}$. Martin Marietta commented that the EPA has proposed updates to the NAAQS for particulate matter that includes a proposal to exempt mining sources from the proposed $PM_{10-2.5}$ standard. Martin Marietta recommended updating the proposed allowable PM_{10} emission rate based on the proposed $PM_{10-2.5}$ NAAQS and exempting mining sources from the $PM_{10-2.5}$ standard. Alternatively, Martin

Marietta recommended incorporating the NAAQS standard by reference in order to maintain the proposed maximum allowable emission rate standard current with any NAAQS updates.

The standards mentioned by the commenters have not been adopted. Should the standards become part of federal law, they will automatically become applicable standards. The $PM_{2.5}$ standard is still under proposal and is currently being evaluated by EPA. Since EPA's guidance is to continue to use the current PM_{10} standard until a $PM_{2.5}$ standard becomes effective, the equation to determine compliance with the PM_{10} standard will remain in §106.261.

Dow presumes the variable ESL in the proposed §106.261(a)(1)(K) (now §106.261(a)(1)(J)) is the short-term ESL, but the regulation does not specifically define the term as such. Dow requested that the TCEQ should clarify that the short-term ESL should be used in the equation.

The commission agrees with this comment and will make the change to the newly designated §106.261(a)(5)(J) to clarify that the variable "ESL" is the short-term ESL.

Dow noted that in some cases there are air contaminants that do not have a published ESL, and currently one has to obtain an ESL by contacting the appropriate TCEQ staff. Dow commented that the TCEQ should clarify that an ESL value can be used if published or obtained in any way from TCEQ staff. As an alternative, Dow suggested the TCEQ could also consider a 1 lb/hr limit for air contaminants without a published ESL. TIP, Duke, ExxonMobil DC, GCA, TCC, and TxOGA noted that the current §106.261 allowed emissions of up to 1.0 lb/hr for chemicals with no established ESL

and that the proposed rule would require development of an ESL by the Toxicology Section, which may be time-consuming and reduce flexibility. TIP, Duke, ExxonMobil DC, GCA, TCC, and TxOGA suggested that the commission retain the default short-term limit or set a vapor pressure cutoff limit.

The commission is concerned that using a 1.0 lb/hr limit for air contaminants without a published ESL may pose a risk of potential health or welfare effects and is not allowing emissions up to 1.0 lb/hr for chemicals of interest without reviewing the toxicity data or conducting an effects evaluation. However, the commission has changed the rule in response to this comment. For contaminants with no published ESL, applicants can either accept a default short-term emission limit of 0.04 lb/hour (consistent with the impacts review cutoff for permits), or contact the Toxicology Section of the TCEQ to request an ESL. The staff will develop an ESL and post it on the commission's Web site for use by applicants for the PBR. The commission commits to search and derive ESLs within five working days if adequate chemical, physical, and toxicological data are available, or can be supplied by the applicant.

AECT commented that the use of ESLs to calculate the emission limits for air contaminants would effectively turn ESLs into standards, rather than keeping them as guidelines, which is what AECT stated they were developed to be and how they should remain. AECT suggested that the proposed §106.261(a)(1)(K) (now §106.261(a)(5)(J)) be revised such that ESLs are not used to calculate the emission limits for air contaminants.

The commission is not changing the rule in response to this comment. For the majority of contaminants there are no state or federal standards. Some of these chemicals have high toxicity. The use of a short-term ESL will ensure the protection of public health and welfare at the nearest off-property receptor. This method is consistent with the repealed §106.262, which used an equation in which a TLV was used to calculate the allowable emission limits for contaminants. The use of PBRs as an authorization mechanism is voluntary and is available to expedite the construction of new facilities or the modification of existing facilities. If the requirements of a PBR cannot be met or do not appear to be reasonable or applicable for a facility, applicants still retain the ability to apply for a permit or permit amendment where a case-by-case review will be conducted.

Commenting on §106.261(a)(2) (now §106.261(a)(6)), Dow stated that the commission should not establish a different annual emission level for hydrogen chloride versus benzene and ethylene dichloride, since these compounds have similar ESL values. TCC commented that a scientific or risk-based criteria should be established rather than restricting the chemicals' annual emission rates, and that establishment of risk-based criteria would reduce the need to permit all sources handling these chemicals. TCC commented that numerous minor changes at a site will potentially trigger a permit amendment, which it believes is contrary to the TCEQ's intent. TCC also expressed that a more complete explanation is necessary on the basis to select these chemicals and how the limits were developed to provide stakeholders with an opportunity to comment on the specifics. TIP and GCA commented that the new long-term limits for benzene, ethylene dichloride, and hydrogen chloride in

the proposed §106.261(a)(2) did not receive an explanation in the preamble that was specific enough to comment on and recommended deletion of this language.

The commission agrees with these comments. Hydrogen chloride is deleted as a special constituent and will no longer be assessed based on an annual emission rate since the commission no longer reviews the corrosion effect for this contaminant. The rule language and preamble will be adjusted accordingly. The commission agrees that numerous minor changes at a site can potentially trigger an amendment. However, the intent of the changes to §106.261 is to make the PBR protective of public health and welfare. The commission acknowledges that §106.261 will authorize less emissions, but this consequence results directly from the protectiveness review of the PBR. While the commission expects a work load increase, certain authorizations are appropriately accomplished through a case-by-case review.

In addition to the short-term limits described previously, §106.261(a)(6) will limit benzene and ethylene dichloride to one tpy. Chronic effects due to the potential for continued long-term exposure to emissions of these two compounds are of special concern. The emissions of these compounds that would be allowed by using short-term ESLs in Table 1, would not necessarily be protective for individuals who potentially could be exposed to those emissions on a continuous basis (8,760 hours per year). The commission did not consider using the long-term ESL to determine the short-term emission limits for these compounds as this decision would have resulted in overly restrictive short-term limits. The long-term limit of one tpy was based on an evaluation that considered: the long-term ESL; a comparison with allowable emissions at permitted

facilities; and the potential use of this PBR by a number of different types of facilities. Since the commission cannot conduct a case-by-case impacts review for this PBR, the use of a fixed annual emission limit represents a compromise that balances maximum short-term flexibility and long-term protectiveness. This explanation has been added to this section of the preamble. In addition, through future §106.261 registrations, the commission will continue to evaluate this issue and may reconsider the long-term emission rate limitations for these two contaminants.

HCPHES and HSC supported the proposed §106.261(a)(3) (now §106.261(a)(7)).

The commission appreciates the support.

Haynesboone and Zephyr objected to the provision in the proposed §106.261(a)(3) (now §106.261(a)(7)) that requires all emissions from other PBRs be included to meet the emission limitations of §106.261. Haynesboone expressed the belief that if the other facilities/changes meet the requirements of a PBR, then they are insignificant and should not be further restricted by having to meet §106.261 limits. Zephyr objected because this additional limitation changes the requirements for affected PBRs without rulemaking and because the other PBRs are facility specific and have been reviewed based on enforceable inherent design and operational characteristics. Zephyr commented that if there are specific concerns about other specific PBRs, the commission should go through specific rulemaking for those PBRs so there is an opportunity to comment on those changes. TCC commented that this section invalidates all other PBRs. Each PBR has its own impacts review and TCC expressed the belief that using one PBR to limit the other is inappropriate. If the intent of the change is to

prevent the combination of PBRs, then TCC commented that it should be in §106.4 so that all PBRs are addressed.

This requirement was included to ensure the protection of public health and welfare when multiple PBRs are being claimed. The individual requirements (operational requirements, emission rate limitations, etc.) of other PBRs will remain the same. Therefore, rulemaking on other PBRs is not necessary. While other PBRs have been reviewed for facility-specific protectiveness, the operation of those facilities in conjunction with this PBR would not have been evaluated. The emission rate limitation will ensure protectiveness in these types of scenarios. This requirement will only apply when multiple PBRs are being claimed for a single project.

TCC commented that the proposed §106.261(a)(6) places more burden on a change to an existing control device than on an addition of a control device and that this strategy will tend to discourage making improvements to existing control equipment.

The commission is changing the rule to remove the authorization for changes to pollution control equipment as these changes may trigger a case-by-case BACT review and a case-by-case review cannot be conducted for PBR authorizations.

HCPHES concurred with the change in the proposed §106.261(a)(4) (now §106.261(a)(7)), which would restrict the authorization of the use of certain quantities of compounds based on their toxicity. Haynesboone questioned the TCEQ's authority to regulate chemicals based upon factors other than

emissions and to preclude air quality authorization based upon the potential for a catastrophic release. Haynesboone also commented that even if such authority exists, there is no need to exercise it since FCAA, §112(r) imposes a general duty on all persons to prepare for and prevent the accidental release of any extremely hazardous substance. Dow, TCC, and Zephyr requested that the commission provide clarification in the preamble as to how Table 1 is to be applied and commented that permits address emissions and not storage quantities. TCC commented that the storage quantities are overly restrictive in cases where a site already has larger amounts stored on site than those shown on the table. TCC suggested that the additional piping or storage facilities should be authorized by PBR §106.261 if the company represents that it will follow all safe handling procedures as outlined in current Risk Management Plans or disaster review scenarios with the TCEQ.

The commission notes the support of HCPHES but is removing this requirement from the rule, based on other comments. The commission agrees with Haynesboone that the requirements of FCAA, §112(r) and 40 CFR Part 68, including the requirement to prepare for and prevent an accidental hazardous substance release, apply regardless of whether this condition is in the PBR.

HSC opposed §106.261(a)(5) (now §106.261(a)(8)) because it believes that Method 22 is a weaker method of controlling visible emissions than the current 5% opacity limit since the observer cannot determine if a violation exists unless that person can see and state that the visible emissions are leaving the property.

No changes were made in response to this comment. Since Method 22 does not require observer certification, this method provides an easy method of determining compliance that may be used by operators, field investigators, and private citizens. EPA Test Method 9 requires observer certification. Certain aspects of EPA Test Method 9, such as the requirements relating to the position of the observer relative to the sun, or lack of a contrasting background, may make it difficult or impossible to determine compliance with the 5% opacity requirement. In practice, the EPA Test Method 22 system has proved to be more practically enforceable.

BP, Duke, ExxonMobil DC, TIP, and TCC objected to the requirement in the proposed §106.261(a)(5) that visible emissions, from any point or fugitive source, not leave the property for a period exceeding 30 seconds in any six-minute period as determined by EPA Test Method 22. TIP commmented that the requirement was impractical and that the "test derives from Regulation I, which had not been opened up for public comment." BP commented the TCEQ should delete the 30-second visibility restriction and reference the existing Chapter 111 visibility provisions. TCC commented that there is no regulatory basis for the 30-second restriction and this provision should be consistent with Chapter 111 or should be retained at the current requirement of 5%.

No changes were made in response to this comment. The commission disagrees that the visible emission standard is not practically attainable because other facilities in the state are subject to the same standard including those authorized by the standard permit for rock crushers, the standard permit for hot mix asphalt plants, and the PBR for remediation. The test was not derived from Chapter 111. By specifying EPA Test Method 22, which is a visible emissions test,

not an opacity test, this requirement provides a clearly identifiable standard by which the operators, field investigators, and private citizens can determine the compliance status of the facilities. In practice, the EPA Test Method 22 system has proved to be more practically enforceable.

HCPHES concurred with the requirement that visible emissions, from any point or fugitive source, not leave the property for a period exceeding 30 seconds in any six-minute period as determined by EPA Test Method 22.

The commission notes HCPHES' support.

TIP, Duke, ExxonMobil DC, and GCA objected to §106.261(a)(6) (now §106.261(a)(9)), which requires that changes to pollution control equipment meet the requirements of a qualified facility to be authorized by this PBR because the legislature enacted qualified facility flexibility as an incentive program, not a threshold for authorization by a PBR. TxOGA recommended that the proposed §106.261(a)(6) be deleted because it appears to include additions of, or changes to, pollution control and is not needed to establish the authority for such additions or changes. TxOGA also commented that to limit such additions or changes to those that meet the requirements of a qualified facility will discourage operators from making voluntary emissions reductions unless they are willing to spend the extra money to meet at least ten-year-old BACT.

The commission is making changes in the rule. Additions of, but not changes to, pollution control equipment or methods associated with facilities authorized by this section will be allowed by the proposed §106.261(a)(6) provided they meet the requirements of a qualified facility (using BACT no more than ten years old). Changes to pollution control devices or methodology at a permitted source would require a case-by-case review of current BACT and PBRs are not intended to require such a review.

HCPHES recommended that when allowing for additions of, or changes to, pollution control equipment or methods associated with facilities, the proposed §106.261(a)(6) should require BACT.

The commission is making changes in the rule based on this comment. Additions of, but not changes to, pollution control equipment or methods associated with facilities authorized by this section will be allowed by the proposed §106.261(a)(6) provided they meet the requirements of a qualified facility (using BACT no more than ten years old). Changes to pollution control devices or methodology at a permitted source would require a case-by-case review of current BACT and PBRs are not intended to require such a review.

HCPHES agreed with the concept of the tiered system in §106.261(b) for notification, certification, or registration depending on the type of facility authorized. However, HCPHES recommended that all notifications, certifications, and registrations be required to be submitted to all appropriate local air pollution control agencies with jurisdiction.

The commission has changed the rule to require that certification and registrations be submitted to local air pollution control agencies having jurisdiction. Based on other comments, the requirement for submitting notifications, for projects or facilities with annual emissions less than five tpy for minor sources, has been removed from the rule.

Dow and TCC commented that the notification requirements for PBRs are excessive in these sections, particularly for projects with less than five tpy of an emission increase. TCC also requested that the TCEQ streamline these requirements. Dow also suggested notification and certification for increases of less than five tpy be eliminated and that there should not be any type of project-by-project notification for the addition of fugitive emission components. Dow suggested an alternative could be annual registration only.

The commission agrees with TCC and Dow that notification for authorizations where the emissions increase is under five tpy for minor sources is unnecessary and is changing the rule accordingly. However, the commission does not agree with Dow's comment that certification for all projects with annual emissions less than five tpy be eliminated. The annual certification for other projects authorized by this PBR at major sites is necessary to ensure that the total increase in emissions does not trigger review under federal NSR and establish enforceable limits for Title V.

Martin Marietta and TCC requested that submittal of an annual summary also be allowed for non-Title V major sources, as is permitted under the current §106.261(a)(7)(B) in order to reduce the work load

on both industry and the agency for Title V minor sources. Alternatively, Martin Marietta proposed to establish a *de minimis* threshold of 0.10 tpy for any criteria pollutant for which registration is not required. TCC commented that the commission should not require any form of "certification" for PBRs as this term is used commonly in the Title V Permitting Program for certification by a Responsible Official and Duly Authorized Representative.

In order to reduce industry work load associated with notification, certification, and registration, the commission is removing the requirement for notification for projects with emissions increases of less than five tpy for minor sources. The commission is retaining the requirement for annual certification for all projects authorized by this PBR at major sites because it is necessary to ensure that the total increase in emissions does not trigger review under federal NSR and, in most cases, review under Title V.

TIP, Duke, ExxonMobil DC, and GCA commented that the notification requirement in §106.261(b)(1)(A) does not specify the form or the level of detail needed in the notice. TCC commented that "start" of construction or operational change should be noted for clarification in the requirement for notification. TCC commented that §106.261(b)(1)(B) needs to be consistent with §106.261(b)(2), and noted that subsection (b)(1) is for emissions less than five tpy and requires both registration and certification, but subsection (b)(2) is for emissions greater than five tpy and only requires registration.

The commission is deleting the notification requirement for projects with an emissions increase of less than five tpy for minor sources. The commission is also specifying that start of construction will be determined using the definition of "begin actual construction" in §116.12, Nonattainment and Prevention of Significant Deterioration Review Definitions. Projects or facilities with annual emissions of less than five tpy regardless of whether they were located at a minor or major source were never required to register. Projects or facilities with annual emissions less than five tpy located at major sources still require annual certification.

TIP, Duke, ExxonMobil DC, GCA, TCC, and TxOGA commented that the certification requirement in §106.261(b)(1)(B) is unnecessary, that all data submittals should be by registration and the submittal should be consistent with the emissions inventory submittal date, which may vary from March 31.

This requirement was added to ensure that emissions authorized by this section have federally enforceable limits and that emissions do not trigger any additional federal review. The commission agrees with the comment concerning submission dates and is changing the rule language to require submission when the emissions inventory is due.

HSC supported a registration requirement in §106.261(b)(2) for one tpy or more of additional air pollutants emitted, instead of the proposed five tons. HSC commented that in an ozone nonattainment area, such as Houston, a one tpy increase can cumulatively amount to significant amounts and should be tracked by the TCEQ.

The commission is not changing the rule in response to this comment. The current major source threshold for moderate ozone nonattainment areas is 40 tpy. The five tpy registration threshold for PBRs adopted by the commission is a conservative but reasonable limit based on its relation to the major source threshold and the greater frequency of PBR use as compared to the number of major sources.

TIP, Duke, ExxonMobil DC, GCA, and TxOGA commented that the §106.261(b)(3) requirements for change of control device or method were unnecessary, excessively stringent, and should be deleted. TxOGA also suggested that notification for additions of, or changes to, pollution control equipment or methods be made within ten days after the commencement of construction.

The commission is changing the rule to remove the authorization for changes to pollution control equipment as these changes may trigger a case-by-case BACT review and a case-by-case review cannot be conducted for PBR authorizations. Additions of pollution control equipment or methods associated with facilities authorized by this section will be allowed by new §106.261(a)(9) provided they meet, at a minimum, the requirements of a qualified facility (no more than ten-year-old BACT). The executive director needs to review such actions to ensure that the new control method represents ten-year-old BACT and is not a reduction of control efficiency for any permitted facilities.

Dow commented that §106.261(b)(3) is not clear as to how it would be applied if there are physical or operational changes to existing equipment, which route a vent gas stream to a control device such as a

flare or thermal oxidizer. Dow also proposed that registration under §106.261 of all changes that result in an emission increase in excess of five tpy occur within ten days after making the change.

The commission is not changing the rule in response to this comment. Since the equipment in question is not an operational part of the control device, it is not subject to the requirements of §106.261(b)(3). However, the rule requires compliance with the certification requirement in §106.261(b)(1) or the registration requirement in §106.261(b)(2) depending on the quantity of annual emissions.

HSC supported this provision in §106.261(c) and HCPHES agreed with specifically limiting the types of activities and emissions that are authorized under this PBR.

The commission appreciates the support.

TCC requested that the commission provide clarification of the phrase "standard permit is in effect" in §106.261(c)(1) as to whether it means standard permit in effect for the equipment or in effect within the rules.

The term "standard permit is in effect" means a standard permit is applicable to the particular facility type and has been adopted by the commission. For example, §106.261 cannot be used to authorize a concrete batch plant because there is a standard permit that specifically addresses those concrete batch plants.

HCPHES agreed with proposed new §106.263.

The commission appreciates the support.

Arkema commented that it appreciates the commission's recognition that many of these activities do not merit consideration in the site-wide NSR permit, and supported efforts to provide a PBR mechanism to allow flexibility. Arkema also commented that there are some circumstances where some maintenance activities occur often enough to merit consideration in the site-wide NSR permit. Arkema requested that the commission clarify that authorizations for discrete emission units are adequate for addressing temporary maintenance emissions, and that those regulated entities that have elected to identify temporary maintenance emissions in their existing authorizations will not be required to remove them.

No changes were made in response to this comment. Section 106.263 is intended to authorize only units or facilities that have not been previously authorized. It authorizes temporary maintenance facilities and the emissions resulting from the operation of those facilities. This rule is not intended to specifically authorize those activities. Units for which authorization has already been obtained, should continue to operate under their current authorization.

TxOGA suggested the addition of "and activities" in §106.263(a) to clarify that the PBR authorizes both the equipment and the activity.

The commission did not revise the rule in response to this comment because the rule is intended to authorize temporary maintenance facilities and their emissions, not activities. Authorization for maintenance activities is in new §106.268.

ExxonMobil DC, GCA, TIP, and TCC commented that §106.263(b)(3), which prohibits authorization of changes that result in new emissions would prevent some cleaning activities on permanent facilities since any emissions from the cleaning chemicals would be new emissions.

The commission is not changing the rule in response to this comment. The restriction in §106.263(b)(3) applies only to physical or operational changes. It does not include cleaning.

Duke, ExxonMobil DC, GCA, TIP, TCC, and TxOGA objected to limiting the temporary facilities that may be authorized by §106.263 to those listed in §106.263(c) stating that no list can capture all possible examples of qualifying facilities. TCC requested that the commission provide a definition of "temporary facility" in the rule. TxOGA also suggested that the language be changed to "Temporary maintenance facilities and activities include, but are not limited to, the following . . .."

The commission did not revise the list of facilities in §106.263(c) because these facilities have been previously reviewed for protectiveness. No new facilities were suggested for addition, and the commission was unable to review specific additional facilities for protectiveness and revise the rule to include them. If in the future additional facilities are suggested, and protectiveness can be determined, the commission may consider amending §106.263 to add new facilities. Owners or

operators can obtain authorization under §116.119, De Minimis Facilities or Sources, or other PBRs to authorize maintenance facilities or activities. For example, painting a fixed structure using less than 100 gallons of paint and less than 50 gallons of stripping solvent is authorized under §116.119(a)(2).

Dow urged the commission not to impose an annual emission limit across a site for temporary facilities involved in abrasive blasting and surface coating on immovable fixed structures, as imposed by §106.4(a)(1) - (3). Dow stated that these types of activities should be the types of activities that are authorized by the temporary maintenance PBR, and that the size of the site and level of activity at the site should not impair the ability to use the temporary maintenance PBR.

The commission is not changing the rule in response to this comment. As stated in §106.4(a), to qualify for a PBR the general requirements in Chapter 106, Subchapter A must be met. The emission limits in §106.4 are set to ensure protectiveness and therefore no exception to that requirement can be granted in individual PBRs. Therefore, a facility cannot qualify for the temporary maintenance PBR unless the requirements in §106.4 are first satisfied.

Dyess AFB and USAF-Regional are concerned about how miscellaneous chemical usage will be addressed in the rule changes. Dyess AFB notes that under §106.261, a process using toluene (ESL 1,880 micrograms per cubic meter ($\mu g/m^3$) located 1,000 feet from the property line (X = 365) would have an hourly short-term limit of 5.15 lb/hr, but under the current §106.263, toluene is only limited to 1,000 pounds in 24 hours for individual occurrences. Dyess AFB suggested adding a monthly

emission limitation for individual air contaminants for sites such as military bases to ease the burdensome (and in some cases impossible) recordkeeping requirements associated with miscellaneous chemical usage to meet the new lb/hr limitation of individual air contaminants for the numerous processes and activities conducted at a military base. USAF-Regional suggested that the commission consider a streamlined form of compliance demonstration that would be based on the maximum limits currently in place (such as 1,000 lbs/24 hrs), and commented that the annual submission of emissions inventories, including speciation of HAPs, would continue to provide the commission with an accurate reporting mechanism of any chemicals of concern, without placing an undue administrative burden on the military work force. Alternatively, if the commission must have documentation of risk through distance to receptor calculations for specified activities, USAF-Regional suggested the option to provide the commission with location-specific, one-time calculations based on the worst-case scenario per pollutant for each activity.

The commission is not changing the rule in response to these comments. Section 106.261 must be protective in terms of potential impacts to public health and welfare. This protectiveness is determined on a short-term (hourly) basis as well as a long-term (annual) basis. The commission uses hourly emission rates and hours of operation to determine potential impacts of the emissions. Allowable emission rates are determined by compliance with one-hour ESLs. A monthly ESL does not provide adequate short-term protection. The commission has determined that applying variable limitations with specific distances will give applicants greater flexibility in their operations. A one-time calculation based on the worst-case scenario for each activity can be used to demonstrate protectiveness in all mechanisms of authorization.

Arkema requested that the commission clarify that the 180-day limit in §106.263(d) applies to discrete activities, such as sandblasting a specific emission unit. Arkema commented that many activities occur in one portion of a facility one year, and may be repeated for different facilities within a year or two of the completion of the similar activity in a different part of the facility. TxOGA commented that the current wording, allowing registered temporary maintenance facilities to operate longer than 180 consecutive days, should be retained. TIP, Duke, and ExxonMobil DC commented that the extension allowing a maintenance facility to operate beyond 180 days was useful and the fact that it was only used three times in four years indicates it is not being abused. TIP, Duke, and ExxonMobil DC suggested the commission keep the extension in the new §106.263.

The commission appreciates the comments and has determined that operation beyond the 180-day limit is useful to the regulated community. Therefore, §106.263(d)(2) has been revised to allow facilities to operate up to 365 days. Additionally, as outlined in §106.263(d)(2), temporary facility authorizations are eligible for a specific location at a site, not site-wide.

TCC commented that this proposal requires MSS, emissions from temporary maintenance facilities, and QUAN emissions be aggregated to meet the emission limits in §106.4, and that is not consistent with PBRs adopted for other sources' PBRs. TCC stated that the limits under §106.4 should apply to each PBR because they are separate authorizations, and the restriction will force large sites to apply for a permit amendment.

The commission does not agree with this comment. In order to ensure protectiveness, the cumulative, plant-wide total annual MSS emissions for any rolling 12-month period must comply with the emission limitations of §106.4. Because, in many cases, the authorizations in §§106.263, 106.268, and 106.269 overlap with regard to the character of emissions, the limits in these PBRs are set to prevent misuse. Since these PBRs authorize similar emissions, the commission has chosen to take a more conservative approach with the initial implementation of this rule to prevent overlapping use.

Arkema requested that the commission issue guidance concerning when an owner or operator should include such activities in the site-wide NSR permit and the Title V permit.

Section 106.263(e) states that temporary maintenance facilities that cannot meet all applicable limitations outlined in §106.263 must obtain authorization under Chapter 116. Therefore, if a facility cannot meet the requirements of §106.263, it should be authorized in an NSR permit. The executive director has made a determination that certain PBR authorizations must be included in the Title V permit application. This information is available in the commission guidance document, entitled "Form OP-REQ1, Application Area-Wide Applicability Determinations and General Information." This document specifies that §106.263 must be included in the Title V application.

EPA requested an explanation of how the commission will ensure that authorization of MSS emissions in PBRs, standard permits, and individual permits will provide public participation similar to those

requirements that would have been imposed if the emissions had been reviewed in the original construction or modification permitting action. EPA stated that this generally requires a 30-day comment period, availability of the state's air quality analysis, preliminary decision to approve or disapprove the permit and the draft permit, and the opportunity for a public hearing. EPA requested clarification of whether the proposed rules would provide the opportunity for public participation on the draft permit and the state's preliminary analysis to authorize MSS emissions in PSD or NNSR permits.

The proposal process for PBRs and standard permits includes the opportunity for public comment. Comments are addressed by the commission when it adopts PBRs and standard permits, as was included as part of this rulemaking and the concurrently adopted "Air Quality Standard Permit for Maintenance, Startup, and Shutdown Activities." PBRs are adopted under the rulemaking process of the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001. Standard permits are adopted under a similar process specified in THSC, §382.05195 and 30 TAC §116.603. Both of these authorization mechanisms must be protective of human health and welfare, and therefore that analysis is included in proposed versions subject to public comment. In addition, pubic hearings are part of the proposal process. Individual reviews associated with permit or permit amendments that authorize increases in emissions are subject to notice in the same way as all other applications for new facilities or increases in emissions. The rules governing notice are found in 30 TAC Chapter 39, Subchapters H and K. Notice triggers are the same for new MSS emissions as they are for emissions from production, whether from new facilities or modifications.

The new PBRs, MSS standard permit, and amendments to Chapter 116 do not make any changes to public notice requirements or opportunities that already exist for these types of authorizations. The current notification requirements for new source review permits in Chapter 39, Public Notice, comply with federal requirements for opportunity for public participation regarding the draft permit. Neither a PBR nor a standard permit can be used to authorize changes at facilities that will be subject to PSD or NNSR review. Such a change may only be authorized with a concurrent permit amendment, which is subject to public notice and comment.

ACES commented that the proposed §106.268 is substantially more complex and more difficult to comply with than the current §106.263 it is replacing, and cannot be effectively used for routine minor maintenance operations. ACES commented that replacement of the current §106.263 limits, based on reportable quantities, with the new limitation from §106.261, imposes a significant new degree of complication and uncertainty on the regulated community. ACES noted that under §106.268, the absolute limit of allowable emissions will vary depending upon the location and stack height of the associated emission point. For example, the amount of emissions allowed from a pump 304 feet from a receptor would be slightly more than half the amount of emissions allowed for a pump five feet closer to the receptor. ACES commented that the imposition of variable limitations would make it impossible to integrate the emission limits into general maintenance procedures, and would make it necessary for continuous emission calculations to be performed concurrently with all minor maintenance and operating activities authorized by this PBR. ACES proposed returning to the reportable quantity limitations of the current §106.263 that are sufficiently protective and are already applicable to recordable MSS activities not authorized by this PBR or other forms of authorization.

The commission agrees that the proposed MSS rules add complexity for authorizing MSS and QUAN emissions, but the commission considers the new requirements appropriate and necessary for protection of human health while providing flexible and expeditious methods for authorizing MSS and QUAN. PBRs authorizing MSS and QUAN activities must meet the short- and long-term emissions requirements of §106.261 in order to be protective of human health and welfare. Reportable quantities were never intended as an authorization. They are used to determine when reporting of excess emissions is required under Chapter 101, Subchapter F, and excess emissions below a reportable quantity are still required to be recorded.

ACES commented that the proposed rules apply severe limitations on the authorization of MSS emissions that do not apply to the authorization of other types of emissions. ACES also commented that there is no basis for many of the differences and that MSS emissions should be treated like other emissions, with no additional restrictions, whenever possible. ACES commented that §106.269 has extremely restrictive limits on both annual and hourly emissions that will make it impossible to authorize actual historical QUAN emissions. Additionally, ACES commented that the imposition of the hourly emission limits of §106.261 and the annual emission limits of §106.4 on all QUAN emissions from all facilities, without consideration of actual operational needs, engineering design, or safe operation, is arbitrary, inappropriate, and unworkable.

The commission disagrees with the commenter that the limitations of this adoption are severe or unworkable. The restrictions on MSS and QUAN are similar to the restrictions placed on emissions previously authorized by the commission. Facility owners and operators may use PBRs

for MSS and QUAN, standard permits, or case-by-case permits to authorize MSS as they may with production emissions. In addition, the Air Permits Division director may allow authorization of QUAN in a case-by-case permit. As with other PBRs, the use of §106.268 and §106.269 must be protective of human health, and the restrictions placed on their use are necessary to accomplish this.

ACES commented that in cases where MSS emissions are authorized by a PBR, there is no reason to prohibit rolling those emissions into a permit. ACES commented that the prohibition effectively forces facilities to choose how to authorize all MSS emissions from each facility at present and in the future, because once emissions from a given facility are authorized, there is no mechanism to move the emissions from a PBR to a permit or from a permit to a PBR. ACES commented that the limitation is arbitrary, unnecessary, and limits future operational flexibility.

The commission is changing the rule to allow, but not require, the incorporation of this PBR into a permit.

HCPHES agreed with proposed §106.268 and supported the concept of specific emission limitations, as well as the cumulative-use limits as part of this PBR.

The commission appreciates the support.

TIP, Duke, ExxonMobil DC, and TxOGA commented that the term MSS "emission releases" used in §106.268 was confusing and recommended use of the established term MSS "activities."

The commission agrees with the commenter that "emission releases" used here is confusing and will change the rule language to "emissions from MSS activities."

TCC commented that the use of "facility" in §106.268(b)(2) is not appropriate. For example, a flare is a facility, so if MSS emissions from it are already permitted, then additional MSS emissions from another source routed to the flare cannot be authorized under the PBR. TCC and TxOGA commented that this restriction is inappropriate and should be deleted. Alternatively, TxOGA suggested that if there are good reasons for the limitation not stated in the preamble that an exception be made for flares, vapor recovery units, or other control devices.

The commission is not making any changes in response to this comment. Section 106.268 may be used to authorize new or additional MSS emissions from a different activity. Using TxOGA's example, the resulting emissions may be routed to a flare which is already authorized with production emissions. Routing of additional streams to the flare must not result in degradation of existing control efficiency or negatively affect impacts from the facility or group of related facilities.

TCC commented that maintenance activities can involve bringing in a new chemical for cleaning equipment and therefore, should be qualified under this PBR.

The commission agrees that the proposed §106.268(b)(5) would prevent authorization of some cleaning activities and, therefore, the commission is removing the restriction that no new contaminants can be emitted due to MSS activities.

TCC commented that the restriction in §106.268(b)(6) is overly restrictive and needs to be removed from this rule. TIP, Duke, and ExxonMobil DC commented that §106.268(b)(6) excludes this PBR from authorizing emissions resulting from repairs on piping fugitive emissions and should be deleted. Authorization may be unclear elsewhere, and if satisfied here, should be available.

The commission is not changing the rule in response to this comment. Emissions authorizations for leak detection and repair (LDAR) and component leaks that allow for first-attempt repairs are based on synthetic organic chemical manufacturing industry (SOCMI) factors. SOCMI emission factors already include the emissions associated with the allotted repair period and do not require further authorization.

TCC commented that the phrase "could have been avoided by technically feasible design" in §106.268(b)(7) is subjective and could lead to inappropriate interpretations. TCC also commented that this provision should be in Chapter 101 and not in this section. CCJ objected to the phrase "technically feasible, design, operation and maintenance consistent with good engineering practice" in §106.268(b)(7) because CCJ expressed the belief that it is a vague, subjective standard that will likely result in uneven enforcement. CCJ suggests a simple, objective standard to ensure all entities are operating under the same requirements.

The commission is not changing the rule in response to these comments. As with all PBRs, §106.268 is not intended to authorize emissions due to poor equipment design or operation. The terms "technically feasible design" and "maintenance consistent with good engineering practice" are generally used in the field of environmental regulation and have a reasonably accepted understanding and are based on existing industry practices.

TCC commented that §106.268(c) is unduly restrictive by requiring emission releases of any air contaminant to meet the short-term and annual emission limitations of §106.261 because the proposed use of the distance from the closest emission point to the nearest property line is technically impractical during periods of MSS when multiple maintenance activities for different emission points can occur simultaneously throughout a site.

The commission is changing §106.261 in response to this comment. Using the compound specific weight fraction methodology will enable Table 1 to be used in a manner that is more representative of the potential impact of emissions.

TCC commented that §106.268(d) requires MSS, temporary maintenance facility emissions, and QUAN emissions be aggregated to meet the emission limits in §106.4, and commented that it is not consistent with other sources' PBRs. TCC commented that the limits under §106.4 should apply to each PBR because they are separate authorizations, and the restriction will force large sites to apply for a permit amendment. ACES also commented that it is possible that the emission limits apply to all MSS events happening at a single site simultaneously, and that the commission should clarify the

applicability of the emission limits in this PBR. TIP, Duke, ExxonMobil DC, and GCA commented that §106.268(d) requires that the aggregate of total site-wide emissions from MSS, QUAN, and temporary maintenance facilities should not exceed the emission limits in §106.4. This restriction unfairly penalizes larger sites that have many PBR eligible facilities spread over a wide area. This provision should be deleted since the individual PBR restrictions are sufficient to ensure protectiveness. Dow commented that the annual emission restrictions imposed on the combination of temporary MSS emissions, MSS PBR emissions, and QUAN emissions will limit the practical use of these PBRs for larger sites. Dow commented that the limits imposed by §106.4, at worst, should be applied to each PBR because they are separate authorizations.

The commission understands that the use of PBRs to authorize emissions from activities as opposed to emissions from facilities is a new concept, but it is a necessary recognition of the multiple authorizations existing at some sites and is consistent with THSC, §382.05196, which requires the commission to restrict the use of PBRs to maintain emissions authorized at insignificant levels. MSS emissions will occur at almost all facilities, but if each facility at a site was able to authorize MSS to the limits of §106.4, the significance level of emissions would quickly be exceeded. In effect, the commission would have authorized the equivalent of a significant new facility using PBRs when the appropriate method would have been an NSR permit amendment.

ACES commented that it is unclear whether §106.268(c) requires the emission limitations of §106.261 to apply to each emission point, each facility (even if using a common emission point), or each MSS

activity (where multiple federal index numbers (FINs) and emission point numbers (EPNs) may be involved).

No rule change is necessary. The emission limits of §106.261 apply to activities authorized by the claim of §106.268.

ExxonMobil Production commented that §106.268(d) is redundant to §106.268(c) and that recordkeeping in subsection (c) already requires sufficient demonstration of compliance with PBRs. Additionally, ExxonMobil Production commented that the Title V major threshold is based on PTE, not actual emissions. ExxonMobil Production noted that the PTE of a site could increase above the Title V major threshold through the addition of new sources while actual emissions remain below the threshold, and commented that this proposal encourages sites to use actual emissions to determine Title V status. ExxonMobil Production commented that an operator could receive a notice of violation for failing to have a Title V permit if a site audit by the commission or EPA showed PTE to be above major source thresholds even if the operator was complying with this subsection.

Section 106.268(d) is not redundant to §106.268(c) because subsection (c) covers short-term emissions (protectiveness) and subsection (d) covers cumulative site-wide emissions (insignificance). The commission is aware that certain sites have the potential to become major with the addition of MSS to their production emissions. The owner or operator must submit certification as required by §106.6 to confirm federal non-applicability or, if required, a Title V permit application.

TxOGA suggested some revisions to §106.268(d), which would add clarification and consistency with the recommendation to change the compliance demonstration to a calendar year. TxOGA commented as originally proposed, this limitation appears to apply to all MSS activities at a regulated entity. TxOGA commented that there is no need to reference an applicable emissions limit under §106.4(3) since it would apply even if subsection (d) were deleted, and that it is not necessary to specify a compliance period for the applicable emissions limit under §106.4(a)(1) since it was defined elsewhere.

The commission makes no changes in response to this comment. The compliance demonstration requirements of §106.268 are consistent with the general requirements of Chapter 106, Subchapter A. It is necessary for facilities operating under a PBR to be able to continuously demonstrate compliance. A facility must demonstrate continual compliance with individual PBR limits and the limits of §106.4. The rules were adopted with the rolling 12-month requirement for consistency with Texas Government Code, §311.005, which provides the definition of a year to be 12 consecutive months.

TIP, Duke, ExxonMobil DC, GCA, TCC, and TxOGA commented that §106.268(e) requires additional recordkeeping that must be kept separate and distinct from other records. There is no valid reason for the separation and the required data categories are overly prescriptive. Since this represents a substantial new administrative burden, the requirement should be deleted. TCC commented facilities equipped with Continuous Emission Monitoring Systems (CEMS) already have continuous records collected that are readily available for any period of time but may have multiple sources venting to the system. It can be extremely burdensome to segregate the MSS data from production data. TxOGA

also commented that because the emissions at a regulated entity for activities authorized by §§106.263, 106.268, and 106.269 must be aggregated, the operators should be given the option to aggregate the §106.8 recordkeeping for these three PBRs.

The commission does not agree. The commission determined that the recordkeeping requirements of this section are necessary to demonstrate compliance and are similar to the records currently required under Chapter 101, Subchapter F used to establish an affirmative defense.

ACES commented that since §106.268 does not specify any "required monitoring," the reference is meaningless and unclear. Therefore, ACES commented that the reference should be removed, or monitoring requirements should be specified in order to clarify compliance responsibilities.

The commission is not changing the rule in response to this comment. The owner or operator must determine whether any state or federal regulation requires monitoring for the activity.

Dow supported the proposal of §106.269 to authorize very small emissions that occur from well-run and well-maintained facilities. Dow agreed conceptually with the creation of the QUAN PBR to acknowledge that these small emission sources do exist from time to time.

The commission appreciates the support.

EPA suggested that the proposed §106.269 as written is vague and potentially unenforceable. EPA recommended that TCEQ withdraw the proposed §106.269 and review this category of emissions on a case-by-case basis. EPA also recommended that TCEQ consider revised reporting rules to clearly identify these excess emission reports to minimize the administrative burden on TCEQ staff.

The commission has not made any change in response to this comment. QUAN emissions are those emissions from well-maintained, operated, and managed facilities which cannot be entirely eliminated. These emissions are therefore anticipated, quantifiable to an extent, yet unscheduled. Examples of QUAN are emissions that may be released intermittently from a pressure relief valve, compressor blowdowns, or even a burst seal (well before its life expectancy). Emissions events are defined in the TCAA as "an upset, or unscheduled maintenance, startup, or shutdown activity, that results in the unauthorized emissions of air contaminants from an emissions point." The commission further defines "upset event" in 30 TAC §101.1(110) as an unplanned and unavoidable breakdown or excursion of a process or operation that results in unauthorized emissions. A maintenance, startup, or shutdown activity that was reported under 30 TAC §101.211, Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements, but had emissions that exceeded the reported amount by more than a reportable quantity due to an unplanned and unavoidable breakdown or excursion of a process or operation is an upset event. These types of events include: a startup or shutdown that was not part of normal or routine facility operations, is unpredictable as to timing, and is not the type of event normally authorized by permit; or a maintenance activity that arises from sudden and unforeseeable events beyond the control of the operator that requires the immediate corrective

action to minimize or avoid an upset or malfunction. Clearly, QUAN emissions are not the same as the most commonly reported emissions events, those unexpected incidents resulting from inadequate maintenance, malfunctions, accidents, and disasters.

Because the commission has not historically provided an authorization mechanism for QUAN emissions, owners and operators were required to report these unauthorized emissions under the commission's rules requiring reporting of emissions events, and previously, rules regarding reporting of upsets. By adopting these rules, the commission has determined that QUAN emissions should be provided an authorization mechanism and no longer reported as emissions events. Generally, QUAN emissions will only be authorized by PBR §106.269. However, in limited circumstances, authorization may be requested through a permit review provided that emissions are minimal, activities are part of routine operation, and releases are inherent to the process.

EPA stated that any exemptions from compliance with BACT, LAER, or minor NSR emission limits must be specific, well-defined, and tied to a specific narrow event of limited duration, and expressed concern that §106.269 may provide a relaxation of these requirements.

A PBR cannot be used to relax BACT, LAER, or NSR emission limits requirements. Although PBRs are not required to meet BACT, §106.269 does meet EPA's requirements for specificity. It is distinguished from individual permitting in that the emissions are not scheduled as would be for a continuous or batch operation process. This PBR is not a relaxation of existing permitting

levels or requirements that are approved into the SIP. Rather, it is a narrowly tailored authorization mechanism designed to reduce reporting of excess emissions that meet applicable air quality standards. For example, it does not authorize new or modified facilities, or reconstruction of a facility. This authorization also does not apply to physical or operational changes to a facility that increase capacity or production beyond authorized performance levels or result in the emission of a new air contaminant; first-attempt repairs on piping fugitive emissions authorized by an NSR permit, standard permit, or another PBR; or emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation, and maintenance consistent with good engineering practice. In addition, QUAN emissions must meet both the short-term and annual emission limitations of §106.261 to ensure protection of public health and welfare for each air contaminant. Finally, it prevents stacking of QUAN and MSS emissions, and limits the total of QUAN, MSS, and temporary maintenance facility emissions to an amount not to exceed any applicable emission limit in §106.4 (a)(1) - (3). This limitation ensures that the combined emissions from these authorizations do not exceed levels that have been determined to be protective of public health and welfare. QUAN emissions from a well-maintained and properly operated facility should not approach the emission levels from production.

EPA commented that it is unclear how the commission will quantify emissions authorized under §106.269 for SIP planning purposes.

The commission does not regard these QUAN emissions as new for SIP planning purposes because they have been previously documented under Chapter 101.

AECT suggested the removal of, "as specified in the definition of normal operations in §116.10 of this title (relating to General Definitions)," in §106.269(a) and insertion of the definition of QUAN from §116.10, "This section does not authorize emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation, and maintenance consistent with good engineering practice."

The commission agrees and is including the definition of QUAN in §106.269(a).

TxOGA commented that QUAN, as defined in this PBR, is not useful to the oil and gas industry. TxOGA recommended that the limitation regarding "normal operations" be removed to allow the use of this PBR to cover malfunctions and accidents in its final adoption.

The commission is aware that not all PBRs will be useful to all industries or sites. The commission does not intend to authorize accidents and malfunctions. MSS emissions and QUAN should be part of normal operations since these emissions are either predictable and anticipated and, therefore, the commission has included them as part of "normal operations."

Arkema expressed general support of the TCEQ's proposal to ensure that emissions that are quantifiable and anticipated are properly authorized. Arkema requested that the TCEQ allow regulated

entities the opportunity to consolidate any PBR into a site-wide NSR permit, or allow the regulated entities to identify the various PBRs and standard permits that govern TCAA compliance in the regulated entity's Title V operating permit. Arkema requested that the TCEQ treat all authorizations consistently, either require full consolidation in the site-wide NSR permit or allow the Title V permit to serve as the consolidation mechanism. Arkema also requested that the TCEQ not remove any operational flexibility afforded to Title V regulated entities under §122.222 and that the TCEQ allow regulated entities the maximum flexibility to authorize emissions without undue restrictions.

The commission appreciates the support. The commission is changing concurrently adopted rule language in Chapter 116 to allow for voluntary incorporation. All NSR authorizations for MSS are already required to be included in a facility's Title V permit.

Arkema requests that the TCEQ clarify that, while pipeline repair emissions could be included in QUAN, the absence of repair emissions as a result of injection of an inert gas, may be indicative of best practices in the chemical industry.

Pipeline repair emissions could be included in QUAN depending on the circumstances that resulted in the emissions. The commission agrees that purging of equipment with inert gas to reduce repair emissions could be categorized as a "best management practice."

Arkema commented that the TCEQ has already authorized some or all of the emissions events that this proposal has identified as QUAN emissions. Arkema commented that the requirement that §106.269 is

the exclusive mechanism to authorize QUAN emissions is confusing and would require making many substantial changes to existing maximum allowable emission rates tables that the TCEQ has already authorized in existing NSR permits. Arkema requested that the TCEQ not require regulated entities already including QUAN emissions in existing authorizations to remove them from existing permits.

The commission is not changing the rule in response to this comment. The commission will not allow multiple authorization methods for QUAN in order to restrict the amount of emissions authorized. Therefore, QUAN emissions that have already been authorized should remain under their current authorization.

TIP and GCA commented that §106.269(b)(1) excludes this PBR from authorizing emissions at a facility that already has QUAN emissions authorized. GCA commented that the exclusion is too restrictive and should be deleted. TCC commented that incremental emission increases from a facility already authorized for QUAN emissions should be allowed and commented that all scenarios cannot be represented at the time of initial authorization. TCC commented that the facility should have the flexibility to authorize additional emission increases if the conditions of the PBR are satisfied. In addition, TCC commented that the use of "facility" is inappropriate. TxOGA recommended the deletion of §106.269(b)(1) that excludes QUAN emissions from a facility that already has QUAN emissions authorized.

This provision is included to prevent multiple authorization methods being used to increase emissions from the same facility above a level that ensures protection of public health and

welfare. The commission is not requiring registration under §106.269 and representation of operating scenarios are not specifically required at the time of authorization. However, operating scenarios certainly would be an appropriate recordkeeping item for demonstration of compliance. The use of the word "facility" is appropriate with regard to QUAN since QUAN emissions result from production operations at the facilities and not separate activities like MSS. QUAN can be authorized up to the limit of the PBR.

Arkema commented that it is concerned the differences between MSS and QUAN emissions are not easy to distinguish. Arkema requested that the TCEQ consider allowing regulated entities to include QUAN emissions into all three types of existing MSS authorizations. ACES commented that the absence of a clear definition of QUAN emissions will create significant confusion and suggested that the TCEQ develop a clear and concise definition of QUAN emissions, with examples, to clearly distinguish QUAN emissions from other MSS emissions. ACES commented that it is very difficult to separate QUAN emissions from other MSS emissions using the definitions and descriptions in the proposal. For example, emissions from clearing a pump as part of a routine, scheduled process turnaround would be considered MSS emissions. However, clearing the same pump to correct a loss of efficiency due to partial plugging would be considered QUAN emissions, as such events are quantifiable and anticipated, but cannot be predicted.

The principal distinction between QUAN and MSS emissions is that MSS can be scheduled; QUAN, though predictable, cannot. For example, partial pump plugging happens routinely and pump clearing should be a regularly scheduled part of the MSS activities authorized. It would

not be appropriate to include QUAN emissions into the MSS authorizations because of concerns relating to cumulative emissions authorized by a PBR exceeding a significance level.

GHASP commented that the definition of QUAN is too vague to effectively limit the emissions that would qualify. GHASP also commented that most, if not all, of the emissions should fit the definition of production emissions, emission events, fugitives, or MSS emissions. GHASP comments that it is impossible to determine the appropriateness of a claim for the proposed QUAN PBR, and that once a QUAN PBR is approved, neither the public nor the EPA will have an opportunity to comment on the appropriateness of any claim for a QUAN PBR. GHASP recommended that the TCEQ delete the definition of QUAN and the QUAN PBR. Houston commented that the definition of QUAN could be used to permit releases that may in fact be violations. For example, intermittent releases from relief valves and seal failures should not be considered normal operations and should be considered emission events. Houston commented that that releases resulting in these types of emissions that could have been prevented by good maintenance or engineering are violations and that allowing such sources to apply QUAN to these types of emissions expands the affirmative defense instead of narrowing it. HSC is opposed to the definition of QUAN used by the TCEQ, and commented that the examples used are ambiguous. HSC stated the TCEQ should not allow these air contaminants to be authorized by a permit or PBR, but should eliminate or maximally reduce these emissions because they are preventable and should not be emitted to begin with.

The commission declines to delete the QUAN portion of the definition of "Normal operations" and the QUAN PBR. This PBR is a narrowly-tailored authorization mechanism designed to

reduce excess emissions that meet applicable air quality standards, as discussed in detail elsewhere in this preamble. All of the QUAN limitations have been subject to the public comment process. Because this PBR can be used in only limited situations and is, by rule, only for insignificant emissions, the commission has determined it is an appropriate authorization to include in its efforts to authorize emissions that have historically been unauthorized. The examples given by Houston, depending on the circumstances that caused the event, may be those that are expected to occur at any well-maintained facility and should be considered as QUAN. The principal distinction between QUAN and MSS emissions is that MSS can be scheduled; QUAN, though predictable, cannot. It is impossible to compile an inclusive list of events that would qualify under the QUAN definition due to the large variety of facilities and activities to be authorized, but the commission expects QUAN emissions to be limited and has chosen the relatively limiting authorization mechanism of a PBR to not only limit emissions but provide the facility owners flexibility in their determination of QUAN. The PBR will also provide relatively quick authorization. The QUAN PBR is one mechanism to authorize historically unauthorized emissions and reduce excess emission reporting for well-controlled and designed facilities.

ACES commented that the proposed §106.269 is substantially more complex and more difficult to comply with than the current §106.263 it is replacing, and cannot be effectively used for routine minor operations generating QUAN emissions. ACES also commented that the replacement of the current §106.263 limits, based on reportable quantities, with the new limitation from proposed §106.261 imposes a significant new degree of complication and uncertainty on the regulated community. ACES noted that under §106.269, the absolute limit of allowable emissions will vary depending upon the

location and stack height of the associated emission point. For example, the amount of emissions allowed from a pump 304 feet from a receptor would be slightly more than half the amount of emissions allowed for a pump five feet closer to the receptor. ACES commented that the imposition of variable limitations would make it impossible to integrate the emission limits into general maintenance procedures, and would make it necessary for continuous emission calculations to be performed concurrently with all minor maintenance and operating activities authorized by this PBR.

Authorizing QUAN is a new concept and §106.269 is not intended to replace §106.263. The commission is changing §106.261 to allow interpolation of the Table 1 distances and stack heights and has established 25 feet as the minimum distance for low-level fugitives. This will allow the maximum amount of emissions to be authorized while maintaining protectiveness, and interpolation will provide additional flexibility.

ACES commented that the prohibition on using §106.269 for facilities where QUAN emissions are authorized by permit is unnecessary and will make it necessary to obtain a permit amendment before making slight changes to maintenance procedures if those changes will result in small changes from the permitted emissions. ACES also commented that this is inconsistent with the way other normal emissions are authorized, and fails to allow minor changes to be addressed without full permit amendments. ACES commented that this limitation is unnecessary, as all other PBR restrictions would still apply, and these restrictions have already been determined to be protective for emissions from other normal operations. ACES commented that maintenance activities and unscheduled but quantifiable and anticipated maintenance activities will be required for many sources currently in

service, making it necessary to routinely authorize both MSS emissions and QUAN emissions from the same sources, but the use of multiple authorization methods for the same facility is prohibited. Thus, ACES commented that the current proposal is unworkable.

This provision is included to prevent multiple authorization methods being used to increase emissions from the same facility above a level that ensures protection of public health and welfare. It is important to note that the QUAN PBR is not intended to authorize maintenance emissions.

ACES noted that §106.269 is intended to authorize QUAN emissions, but is otherwise functionally identical to §106.268. ACES commented that there is no positive benefit from creating two categories of MSS emissions and that both QUAN and MSS emissions are subject to essentially the same requirements for authorization under the TCAA and the proposed PBRs. Therefore, ACES suggested that QUAN emissions be integrated into other predictable or planned MSS emissions and authorized using the same procedures with PBRs, permits, and standard permits.

The commission concurs with the commenter that both MSS and QUAN are subject to essentially the same requirements for authorization. However, §106.268 deals with emissions from planned operations, whereas §106.269 deals with emissions from unscheduled but anticipated events and should remain separate.

HCPHES commented that the creation of QUAN releases is problematic because unexpected emissions are already addressed through the existing emissions event rules. HCPHES stated that if unexpected emissions are from a well-maintained, operated, and managed facility, the emissions event would satisfy the demonstration criteria and be subject to the provided affirmative defense.

The type of emissions that will be authorized by §106.269 are those that may have been recorded or reported under Chapter 101, Subchapter F, because they were previously unauthorized. The definition of QUAN limits these emissions to those that are predictable but unscheduled. This predictability makes QUAN emissions suitable for restricted authorization. Therefore, there will be no need for the owner or operator to prove it meets an affirmative defense. This will allow the commission to focus its resources on the larger unauthorized emissions of concern.

TIP, Duke, and ExxonMobil DC commented that §106.269(b)(5) excludes this PBR from authorizing emissions resulting from repairs on piping fugitive emissions and should be deleted. Authorization may be unclear elsewhere, and if satisfied here, should be available. TCC commented that this restriction is overly restrictive and needs to be removed from this rule. This should be encouraged to allow a facility to repair leaks. Arkema commented that the TCEQ did not address emissions from regulated LDAR programs. Arkema recommended that the TCEQ specifically identify two classes of repairing such components: 1) those emissions from leaking components and the acts of repairing such components; and 2) emissions from small incremental changes in component counts when a facility modifies component counts during normal operations and maintenance. Arkema also commented that the TCEQ should clarify that an entire group of equipment subject to any state or federal LDAR

program may signify one facility, and that each individual LDAR component does not signify a separate facility.

The commission is not changing the rule in response to this comment. Emissions authorizations for LDAR and component leaks that allow for first-attempt repairs are based on accepted EPA emission factors. These emission factors already include the emissions associated with the allotted repair period and do not require further authorization.

TCC recommended the deletion of the phrase "could have been avoided by technically feasible design" in §106.269(b)(6). TCC commented that "could have been avoided by technically feasible design" is subjective and could lead to inappropriate interpretations. TCC also commented that this provision should be in Chapter 101 and not in this section. CCJ objected to the phrase "technically feasible, design, operation and maintenance consistent with good engineering practice" in §106.269(b)(6) because CCJ believes it is a vague, subjective standard that will likely result in uneven enforcement. CCJ suggested a simple, objective standard to ensure all entities are operating under the same requirements.

The commission is not changing the rule in response to these comments. As with all PBRs, §106.269 is not intended to authorize emissions due to poor equipment design or operation. The terms "technically feasible design" and "maintenance consistent with good engineering practice" are generally used in the field of environmental regulation and have a reasonably accepted

understanding and are based on existing industry practices. This restriction is needed to ensure that the QUAN emissions authorized under §106.269 meet the test of "predictable."

Commenting on §106.269(c), ACES stated it is unclear if the emission limitations of §106.261 apply to each emission point, each facility even if using a common emission point, or QUAN where multiple emission points may be involved. ACES also commented that based upon the rule language, it is possible that the emission limits apply to all MSS events happening at a single site simultaneously, and that the TCEQ should clarify the applicability of the emission limits in this PBR.

No rule change to §106.269(c) is necessary. The emission limits of §106.261 apply to activities authorized by the claim of §§106.269, 106.268, or 106.263 or a combination if used at the same site.

TIP, Duke, ExxonMobil DC, and GCA commented that §106.269(d) requires that the aggregate of total site-wide emissions from MSS, QUAN, and temporary maintenance facilities should not exceed the emission limits in §106.4. This restriction unfairly penalizes larger sites that have many PBR eligible facilities spread over a wide area. This provision should be deleted since the individual PBR restrictions are sufficient to ensure protectiveness. TxOGA suggested some revisions to the proposed text to provide for clarification and consistency with the recommendation to change the compliance demonstration to a calendar year. TxOGA commented as originally proposed, this limitation appears to apply to all MSS activities at a regulated entity. TxOGA also commented that there is no need to reference an applicable emissions limit under §106.4(3) since it would apply even if §106.269(d) was

deleted, and that it is not necessary to specify a compliance period for the applicable emissions limit under §106.4(a)(1) since it was defined elsewhere.

The commission understands that the use of PBRs to authorize emissions from activities as opposed to emissions from facilities is a new concept, but it is a necessary recognition of the multiple authorizations existing at some sites and is consistent with THSC, §382.05196, which requires the commission to restrict the use of PBRs to maintain emissions authorized at insignificant levels.

The HSC supported the 10% cap in §106.269(e). ACES, Dow, Duke, ExxonMobil DC, GCA, TIP, TCC, and TxOGA commented that §106.269(e) restricts total site-wide QUAN emissions to less than 10% of the site's maximum allowable emission rate and recommended the deletion of this requirement because it may limit the practical use of §106.269. ACES commented that this restriction unfairly penalizes small sites that over control emissions and have very low permitted emission limits. This restriction should be deleted as overly broad and unnecessary. ACES also commented that the limitation could punish facilities that implement better controls during routine operations, such as facilities that produce or use cryogenic fluid or high-pressure fluids that are designed to have much lower emissions during normal operation than during maintenance and degassing operations. Dow and TCC also recommended that the TCEQ rely solely on the limits imposed by the PBR for individual use, and that it is unclear as to how this concept will be applied. TxOGA also commented that the limitation on site-wide QUAN in §106.269(d) is adequate. TxOGA stated that limiting MSS emissions to a specific percent of the emissions authorized under the PBRs based on the premise stated in the

preamble is inappropriate. Arkema requested that the TCEQ explain the logic for the 10% cap on QUAN emissions.

The commission appreciates HSC's support, but is changing the rule based on other comments. The requirements of §106.261 apply to the amounts of QUAN that may be authorized under §106.269 and have been demonstrated to be protective of human health and welfare. The 10% cap is redundant, unnecessary, and the commission is deleting it.

HSC supported §106.269(f) because it will prevent delays of record requests.

The commission appreciates the comment.

ACES commented that since the PBR does not specify any "required monitoring," the reference to monitoring in §106.269(e)(5) is meaningless and unclear. ACES also stated that the reference should be removed or monitoring requirements should be specified in order to clarify compliance responsibilities.

The commission is not changing the rule in response to this comment. The owner or operator must determine whether any state or federal regulation requires monitoring for the activity and, if so, keep appropriate records of the monitoring to demonstrate compliance.

TCC and TxOGA commented that §106.269(e) is overly restrictive and places an unnecessary burden on facilities to maintain separate records of the same data. TCC commented facilities equipped with CEMS already have continuous records collected that are readily available for any period of time, but for a facility with multiple sources venting to it, it can be extremely burdensome to segregate the MSS data from routine data. TxOGA also commented that because the emissions at a regulated entity for activities authorized by §§106.263, 106.268, and 106.269 must be aggregated, TxOGA recommended that operators be given the option to aggregate the §106.8 recordkeeping for these three PBRs.

The commission does not agree. The commission determined that the recordkeeping requirements of this section are necessary to demonstrate compliance and are similar to the records currently required under Chapter 101, Subchapter F.

SUBCHAPTER A: GENERAL REQUIREMENTS

§§106.2, 106.4, 106.6, 106.8

STATUTORY AUTHORITY

The amended sections are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; and §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities.

The adopted amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, and 382.05196.

§106.2. Applicability.

This chapter applies to the construction of certain types of facilities or changes to [within] facilities listed in this chapter where the construction or change is commenced on or after the effective date of the relevant permit by rule. This chapter applies to all aspects of normal operation as defined in §116.10 of this title (relating to General Definitions). For all purposes under this chapter, site is defined consistent with Chapter 122 of this title (relating to Federal Operating Permits Program).

§106.4. Requirements for Permitting by Rule.

(a) To qualify for any [a] permit by rule after the effective date of this rule, the following general requirements must be met.

(1) Total actual net emissions increases authorized under permit by rule from the proposed facility, group of related facilities, and related increases shall not exceed 100 [250] tons per year (tpy) of carbon monoxide (CO); 100 tpy of [or] nitrogen oxides (NO_x); [or] 25 tpy of volatile organic compounds (VOC); [or] 25 tpy of sulfur dioxide (SO_2); [or] 25 tpy of inhalable particulate matter (PM_{10}); 10 tpy of any individual hazardous air pollutant (HAP) or 25 tpy of combined HAPs; or 25 tpy of any other air contaminant as defined in §116.10 of this title (relating to General Definitions) [except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen].

(2) Net emissions increases authorized under permit by rule must be determined ~~estimated~~ by the following methods throughout this chapter unless noted otherwise in a specific permit by rule:

~~(A) for changes and/or related increases at qualified facilities as specified in the modification of existing facility definition in §116.10(12)(E)(ii) of this title (relating to General Definitions), the difference between the projected new emission rate and the previous allowable emission rate of each air contaminant at each facility;~~

(A) ~~(B) for increases other than qualified facilities,~~ the net emission increase is the difference between the projected new emission rate and the previous actual emission rate of each air contaminant at each facility; and

(B) ~~(C)~~ decreases in emissions relied upon for the project must be actual, ~~practical,~~ practically and federally enforceable, and the decrease must consist of the same air contaminant that is being increased.

[(2) Any facility or group of facilities, which constitutes a new major stationary source, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), or any modification which constitutes a major modification, as defined in §116.12 of this title, under the new source review requirements of the Federal Clean Air Act (FCAA), Part D (Nonattainment) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting

requirements of Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and cannot qualify for a permit by rule under this chapter. Persons claiming a permit by rule under this chapter should see the requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) to ensure that any applicable netting requirements have been satisfied.]

[(3) Any facility or group of facilities, which constitutes a new major stationary source, as defined in 40 Code of Federal Regulations (CFR) §52.21, or any change which constitutes a major modification, as defined in 40 CFR §52.21, under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title and cannot qualify for a permit by rule under this chapter.]

(3) [(4)] No more than one year after the effective date of this rule, unless ~~Unless~~ at least one facility at a site ~~as defined in Chapter 122 of this title (relating to Federal Operating Permits Program)~~ has a current permit issued, or current permit application pending, under [an account has been subject to public notification and comment as required in] Chapter 116, Subchapters B, D, or G - J [Subchapter B or Subchapter D] of this title (relating to New Source Review Permits; [or] Permit Renewals; Flexible Permits; Permits for Grandfathered Facilities; Electric Generating Facility Permits; and Multiple Plant Permits), or upon issuance of the permit, total actual emissions from all facilities permitted by rule at the site [an account] shall not exceed 100 [250] tpy of CO or NO_x; ~~or~~ 25 tpy of VOC, ~~or~~ SO_2, or PM_{10}; 10 tpy of any individual HAP or 25 tpy of combined HAPs; or 25 tpy of any

other air contaminant [except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen]. If the permit application is withdrawn, or if the permit is voided, then any permits by rule authorized in excess of the emission limits in this subsection and after the effective date of this rule are void.

(4) [(5)] Construction [or modification] of, or changes to, a facility, group of related facilities, and related increases commenced on or after the effective date of a revision of this section or the effective date of a revision to a specific permit by rule in this chapter must meet the revised requirements to qualify for a permit by rule.

(5) [(6)] A facility, group of related facilities, and related increases shall comply with all applicable requirements [provisions] of the Federal Clean Air Act (FCAA) [FCAA], §111 (Federal New Source Performance Standards) and §112 (Hazardous Air Pollutants), and the new source review requirements of [the] FCAA, Parts [Part] C and [Part] D and regulations promulgated thereunder.

[(7) There are no permits under the same commission account number that contain a condition or conditions precluding the use of a permit by rule under this chapter.]

(6) [(8)] The owner or operator shall obtain allowances for NO_x of the proposed facility, [or] group of related facilities, and related increases ~~shall obtain allowances for NO_x~~ if they are subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(7) For any permit by rule that requires registration prior to construction, the owner or operator shall commence construction of the authorized facility, group of related facilities, and related increases within 18 months of confirmation of registration from the commission, and shall complete construction within a reasonable time, as determined by the executive director. If an owner or operator fails to meet ~~this~~ these criteria, the owner's or operator's claim to the permit by rule is void. If an owner or operator submits a request for an extension in writing, the ~~The~~ executive director may grant a one-time 18-month extension to the date to begin construction.

(b) Authorization of a facility under the permits by rule in paragraphs (1) - (25) ~~(24)~~ of this subsection includes authorization for maintenance, startup, and shutdown (MSS) emissions with the noted exceptions. Facilities using one of the listed permits by rule may not authorize additional MSS emissions under §106.268 of this title (relating to Maintenance, Startup, and Shutdown (MSS) Emissions ~~Emission Releases~~) or the Air Quality Standard Permit for Maintenance, Startup, and Shutdown Activities:

(1) Subchapter C of this chapter (relating to Domestic and Comfort Heating and Cooling);

(2) Subchapter D of this chapter (relating to Analysis and Testing);

(3) Subchapter E of this chapter (relating to Aggregate and Pavement), except for §106.147 of this title (relating to Asphalt Concrete Plants);

(4) Subchapter F of this chapter (relating to Animal Confinement);

(5) Subchapter G of this chapter (relating to Combustion);

(6) Subchapter I of this chapter (relating to Manufacturing);

(7) Subchapter J of this chapter (relating to Food Preparation and Processing);

(8) §106.263 of this title (relating to Temporary Maintenance Facilities);

(9) §106.265 of this title (relating to Hand-held and Manually Operated Machines);

(10) §106.266 of this title (relating to Vacuum Cleaning Systems);

(11) Subchapter L of this chapter (relating to Feed, Fiber, and Fertilizer);

(12) Subchapter M of this chapter (relating to Metallurgy);

(13) Subchapter N of this chapter (relating to Mixers, Blenders, and Packaging);

(14) Subchapter O of this chapter (relating to Oil and Gas);

(15) Subchapter P of this chapter (relating to Plant Operations) except for §106.371 and §106.372 of this title (relating to Cooling Water Units; and Industrial Gases);

(16) Subchapter Q of this chapter (relating to Plastics and Rubber);

(17) Subchapter R of this chapter (relating to Service Industries) except for §106.416 of this title (relating to Uranium Recovery Facilities);

(18) Subchapter S of this chapter (relating to Surface Coating);

(19) Subchapter T of this chapter (relating to Surface Preparation);

(20) §106.471 of this title (relating to Storage or Holding of Dry Natural Gas);

(21) §106.477 of this title (relating to Anhydrous Ammonia Storage);

(22) §106.494 of this title (relating to Pathological Waste Incinerators);

(23) §106.496 of this title (relating to Air Curtain Incinerators);

(24) Subchapter W of this chapter (relating to Turbines and Engines); and

(25) Subchapter X of this chapter (relating to Waste Processes and Remediation) except for §106.532 of this title (relating to Water and Wastewater Treatment).

(c) Unscheduled but quantifiable and anticipated (QUAN) emission releases can be authorized by §106.269 of this title (relating to Quantifiable, Anticipated (QUAN) Emissions ~~Emission Releases~~).

(d) [(b)] No person shall circumvent by artificial limitations the requirements of §116.110 of this title (relating to Applicability).

(e) [(c)] The emissions from the facility, group of related facilities, and related increases shall comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act (TCAA) [TCAA], including protection of health and property of the public, and all emissions control equipment shall be maintained in good condition and operated properly during operation of the facilities [facility]. ~~Facilities authorized by a permit by rule are not exempted from other regulations or statutes that may apply.~~

(f) The following cannot qualify for a permit by rule under this chapter:

(1) any facility, group of related facilities, and related increases that constitute ~~constitutes~~ a new major stationary source, or any change that constitutes a major modification, as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions). Persons in an ozone nonattainment area claiming a permit by rule under this

chapter should refer to the requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) to ensure that any applicable netting requirements have been satisfied;

(2) any facility, group of related facilities, and related increases that constitutes a new major stationary source, or any change that constitutes a major modification, as defined in 40 Code of Federal Regulations (CFR) §52.21, Prevention of Significant Deterioration of Air Quality;

(3) any construction or reconstruction of a facility, group of related facilities, and related increases that constitute a major source of HAPs for which no applicable maximum achievable control technology (MACT) emission limitation has been established under 40 CFR Part 63;

(4) construction of, or change to, a facility, group of related facilities, and related increases that is prohibited by a condition or conditions in any permit at the site issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(5) any construction of, or change to, a facility, group of related facilities, and related increases that would result in a relaxation or degradation of emission controls on existing facilities permitted under Chapter 116 of this title, except as provided by §106.268 or §106.269 of this title;

(6) ~~any~~ construction of, or change to, a facility, group of related facilities, and related increases in an Air Pollutant Watch List area that would authorize ~~result in an increase in~~ emissions of

one or more applicable Air Pollutant Watch List contaminants ~~compounds~~ for that area, except for qualified facilities, as defined in §116.10 of this title, for which there is no net increase in emissions of Air Pollutant Watch List contaminants and no exceedance of a state or federal air concentration standard or effects screening level for Air Pollutant Watch List contaminants from the site. Emission rates from intraplant trades involving differing stack heights and distances must be adjusted based on the X-values and modeling procedures specified in §106.261 of this title (relating to New Facilities and Changes to Authorized Facilities). Notwithstanding the registration requirements of individual permits by rule, owners and operators claiming a permit by rule to authorize emissions of an Air Pollutant Watch List contaminant in an Air Pollutant Watch List area must submit a registration. The Air Pollutant Watch List may be obtained from the commission's Toxicology Section; or

(7) ~~if applications where there is no construction, physical change, or change in method of operation to an otherwise authorized facility or group of related facilities, emission increases may not be claimed under this chapter.~~ incremental noncompliant emissions detected from a compliance test on a source of emissions authorized by a permit under Chapter 116 of this title or facilities constructed as part of a larger project that should have been authorized by a preconstruction permit action but were erroneously not represented as part of the larger project. The only exception is the authorization of MSS as specified in subsection (b) of this section and QUAN as specified in subsection (c) of this section.

(g) [(d)] A facility, group of related facilities, and related increases [Facilities] permitted by rule under this chapter are not exempted from any permits or registrations required by local air

pollution control agencies having jurisdiction. Any such requirements must be in accordance with TCAA, §382.113 and any other applicable law.

~~(h) Within 30 days after the change of ownership of a facility authorized under this chapter, the new owner shall notify the commission and certify the following:~~

~~(1) the date of the ownership change;~~

~~(2) the name, address, phone number, and contact person for the new owner;~~

~~(3) an agreement by the new owner to be bound by all permit by rule conditions and any certifications associated with the permit by rule claim;~~

~~(4) there will be no change in the type of pollutants emitted; and~~

~~(5) there will be no increase in the quantity of pollutants emitted above that authorized by the permit by rule or certified for the permit by rule claim.~~

(h) ~~(i)~~ Voluntary registrations and certifications will be reviewed at the discretion of the executive director. If it is determined that a voluntary registration will not be reviewed, all documentation will be maintained for reference in the commission's Central File Room and fees returned to the applicant or an account credited.

§106.6. Certification [Registration] of Emissions.

(a) An owner or operator may certify [and register] the maximum emission rates from facilities permitted by rule under this chapter in order to establish federally enforceable [federally-enforceable] allowable emission rates that [which] are below the emission limitations in §106.4 of this title (relating to Requirements for Permitting by Rule). Owners or operators shall comply with the requirements of §106.8(d) of this title (relating to Recordkeeping).

(b) All representations with regard to construction plans, operating procedures, and maximum emission rates in any certification [certified registration] under this section become conditions upon which the facility permitted by rule shall be constructed and operated.

(c) It shall be unlawful for any person to vary from such representation if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless the certification [certified registration] is first revised.

(d) The certification [certified registration] must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility.

(e) A certification~~,~~ [Certified registrations] used to demonstrate that Chapter 122 of this title (relating to Federal Operating Permits Program) does not apply to a source shall be submitted on the required form to the executive director, [;] to the appropriate commission regional office, [;] and to all local air pollution control agencies having jurisdiction ~~over the site~~.

[(1) Certified registrations established prior to the effective date of this rule shall be submitted on or before February 3, 2003.]

[(2)] Certifications [Certified registrations] ~~established on or after the effective date of this rule~~ shall be submitted no later than the date of operation.

(f) All certifications [certified registrations] shall be maintained on-site and be provided immediately upon request by representatives of the commission or any local air pollution control agency having jurisdiction ~~over the site~~. If however, the site normally operates unattended, certified registrations and records demonstrating compliance with the certified registration must be maintained at an office within Texas having day-to-day operational control of the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner.

(g) Copies of certifications [certified registrations] shall be included in permit applications subject to review under Chapter 116~~, Subchapter B~~ of this title (relating to Control of Air Pollution by Permits for New Construction or Modification ~~New Source Review Permits~~).

§106.8. Recordkeeping.

(a) Owners or operators of facilities and sources that are de minimis as designated in §116.119 of this title (relating to De Minimis Facilities or Sources) are not subject to this section.

(b) Owners or operators of facilities operating under a permit by rule (PBR) in Subchapter C of this chapter (relating to Domestic and Comfort Heating and Cooling) or under those PBRs that only name the type of facility and impose no other conditions in the PBR itself do not need to comply with specific recordkeeping requirements of subsection (c) of this section. A list of these PBRs will be available through the commission's Austin central office, regional offices, and the commission's Web site [website]. Immediately upon ~~Upon~~ request from the commission or any air pollution control agency ~~program~~ having jurisdiction, claimants must provide information that would demonstrate compliance with §106.4 of this title (relating to Requirements for Permitting by Rule), or the general requirements, if any, in effect at the time of the claim, and the PBR under which the facility is authorized.

(c) Owners or operators of all other facilities authorized to be constructed and operated ~~operate~~ under a PBR must retain records as follows:

(1) maintain a copy of each PBR and the applicable general conditions of §106.4 of this title or the general requirements, if any, in effect at the time of the claim under which the facility is operating. The PBR and general requirements claimed should be the version in effect at the time of

construction or installation or changes to an existing facility, whichever is most recent. The PBR holder may elect to comply with a more recent version of the applicable PBR and general requirements;

(2) maintain records containing sufficient information to demonstrate compliance with the following:

(A) all applicable general requirements of §106.4 of this title or the general requirements, if any, in effect at the time of the claim; and

(B) all applicable PBR conditions;

(3) keep all required records at the facility site. If, however, the facility normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the plant site;

(4) make the records available in a reviewable format at the request of personnel from the commission or any air pollution control agency ~~program~~ having jurisdiction;

(5) beginning April 1, 2002, keep records to support a compliance demonstration for any consecutive 12-month period. Unless specifically required by a PBR, records regarding the

quantity of air contaminants emitted by a facility to demonstrate compliance with §106.4 of this title prior to April 1, 2002 are not required under this section; and

(6) for facilities located at sites designated as major in accordance with §122.10(13) of this title (relating to General Definitions) or subject to or potentially subject to any applicable federal requirement, retain all records demonstrating compliance for at least five years. For facilities located at all other sites, all records demonstrating compliance must be retained for at least two years. These record retention requirements supercede any retention conditions of an individual PBR.

(d) Owners or operators of sites ~~as defined in Chapter 122 of this title (relating to Federal Operating Permits Program)~~ that do not hold a federal operating permit and do not have a pending application for such a permit shall maintain records to the extent necessary to demonstrate that the site is not a major source, in addition to ~~any~~ fullfilling all recordkeeping requirements specified in applicable PBRs and in subsections (b) and (c) of this section. Records maintained under this subsection shall be retained for at least five years. These records may ~~will~~ include~~, but are not limited to,~~ the following:

(1) records of hours of operation, on at least a monthly basis;

(2) records of throughput or production, on at least a monthly basis;

(3) records or invoices relating to the purchase of raw materials used at the site, on at least a monthly basis;

(4) records of fuel consumption and fuel composition, on at least a monthly basis;

(5) records of coating usage, solvent usage, and volatile organic compound content, on at least a daily basis; or

(6) records of continuous emission monitoring data or other monitored parameters that demonstrate the performance of emission control equipment.

SUBCHAPTER B: REGISTRATION FEES FOR NEW PERMITS BY RULE

§106.50

STATUTORY AUTHORITY

The amended section is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; and §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities.

The adopted amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, and 382.05196.

§106.50. Registration Fees for Permits by Rule.

(a) A registrant who submits a permit by rule (PBR) registration for review by the commission shall remit one of the following fees with the PI-7 registration form:

(1) $100 for:

(A) small businesses, as defined in Texas Government Code, §2006.001;

(B) non-profit organizations; and

(C) municipalities, counties, and independent school districts with populations or districts of 10,000 or fewer residents, according to the most recently published census; or

(2) $450 for all other entities.

(b) This fee does not apply to:

(1) a certification submitted solely for the purpose of establishing a federally enforceable emissions limit under §106.6 of this title (relating to Certification [Registration] of Emissions);

(2) a remediation project conducted under §106.533 of this title (relating to Remediation); or

(3) resubmittal of previously reviewed registrations, if received within six months of a written response on the original action.

(c) This fee is for PBR registrations that are received on or after November 1, 2002.

(d) All PBR fees will be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) and submitted concurrently with the registration to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3087. Fees will be refunded or an account credited when determined that no review is needed or performed at the discretion of the executive director. [No fees will be refunded.]

SUBCHAPTER K: GENERAL

§§106.261 - 106.263

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; and §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities.

The adopted repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, and 382.05196.

[§106.261. Facilities (Emission Limitations).]

[(a) Except as specified under subsection (b) of this section, facilities, or physical or operational changes to a facility, are permitted by rule provided that all of the following conditions of this section are satisfied.]

[(1) The facilities or changes shall be located at least 100 feet from any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities or the owner of the property upon which the facilities are located.]

[(2) Total new or increased emissions, including fugitives, shall not exceed 6.0 pounds per hour (lb/hr) and ten tpy of the following materials: acetylene, argon, butane, crude oil, refinery petroleum fractions (except for pyrolysis naphthas and pyrolysis gasoline) containing less than ten volume percent benzene, carbon monoxide, cyclohexane, cyclohexene, cyclopentane, ethyl acetate, ethanol, ethyl ether, ethylene, fluorocarbons Numbers 11, 12, 13, 14, 21, 22, 23, 113, 114, 115, and 116, helium, isohexane, isopropyl alcohol, methyl acetylene, methyl chloroform, methyl cyclohexane, neon, nonane, oxides of nitrogen, propane, propyl alcohol, propylene, propyl ether, sulfur dioxide, alumina, calcium carbonate, calcium silicate, cellulose fiber, cement dust, emery dust, glycerin mist, gypsum, iron oxide dust, kaolin, limestone, magnesite, marble, pentaerythritol, plaster of paris, silicon, silicon carbide, starch, sucrose, zinc stearate, or zinc oxide.]

[(3) Total new or increased emissions, including fugitives, shall not exceed 1.0 lb/hr of any chemical having a limit value (L) greater than 200 milligrams per cubic meter (mg/m^3) as listed and referenced in Table 262 of §106.262 of this title (relating to Facilities (Emission and Distance

Limitations)) or of any other chemical not listed or referenced in Table 262. Emissions of a chemical with a limit value of less than 200 mg/m^3 are not allowed under this section.]

[(4) For physical changes or modifications to existing facilities, there shall be no changes to or additions of any air pollution abatement equipment.]

[(5) Visible emissions, except uncombined water, to the atmosphere from any point or fugitive source shall not exceed 5.0% opacity in any six-minute period.]

[(6) For emission increases of five tpy or greater, notification must be provided using Form PI-7 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any.]

[(7) For emission increases of less than five tpy, notification must be provided using either:]

[(A) Form PI-7 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any; or]

[(B) Form PI-7 by March 31 of the following year summarizing all uses of this permit by rule in the previous calendar year. This annual notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any.]

[(b) The following are not authorized under this section:]

[(1) construction of a facility authorized in another section of this chapter or for which a standard permit is in effect; and]

[(2) any change to any facility authorized under another section of this chapter or authorized under a standard permit.]

[§106.262. Facilities (Emission and Distance Limitations).]

[(a) Facilities, or physical or operational changes to a facility, are permitted by rule provided that all of the following conditions of this section are satisfied.]

[(1) Emission points associated with the facilities or changes shall be located at least 100 feet from any off-plant receptor. Off-plant receptor means any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities or the owner of the property upon which the facilities are located.]

[(2) New or increased emissions, including fugitives, of chemicals shall not be emitted in a quantity greater than five tpy nor in a quantity greater than E as determined using the equation E = L/K and the following table.]

[D, Feet	K]	
[100	326]	[E = maximum allowable hourly emission, and never to exceed 6 pounds per hour.]
[200	200]	
[300	139]	
[400	104]	
[500	81]	[L = value as listed or referenced in Table 262]
[600	65]	
[700	54]	
[800	46]	[K = value from the table on this page. (interpolate intermediate values)]
[900	39]	
[1,000	34]	
[2,000	14]	[D = distance to the nearest off-plant receptor]
[3,000 or more	8]	

[TABLE 262]
[LIMIT VALUES (L) FOR USE WITH EXEMPTIONS FROM PERMITTING §106.262]

[The values are not to be interpreted as acceptable health effects values relative to the issuance of any permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).]

Compound	Limit (L) Milligrams Per Cubic Meter
Acetone	590.
Acetaldehyde	9.
Acetone Cyanohydrin	4.
Acetonitrile	34.
Acetylene	2662.
N-Amyl Acetate	2.7
Sec-Amyl Acetate	1.1
Benzene	3.
Beryllium and Compounds	0.0005
Boron Trifluoride, as HF	0.5
Butyl Alcohol, -	76.
Butyl Acrylate	19.
Butyl Chromate	0.01
Butyl Glycidyl Ether	30.
Butyl Mercaptan	0.3
Butyraldehyde	1.4
Butyric Acid	1.8
Butyronitrile	22.
Carbon Tetrachloride	12.
Chloroform	10.
Chlorophenol	0.2

Compound	Limit (L) Milligrams Per Cubic Meter
Chloroprene	3.6
Chromic Acid	0.01
Chromium Metal, Chromium II and III Compounds	0.1
Chromium VI Compounds	0.01
Coal Tar Pitch Volatiles	0.1
Creosote	0.1
Cresol	0.5
Cumene	50.
Dicyclopentadiene	3.1
Diethylaminoethanol	5.5
Diisobutyl Ketone	63.9
Dimethyl Aniline	6.4
Dioxane	3.6
Dipropylamine	8.4
Ethyl Acrylate	0.5
Ethylene Dibromide	0.38
Ethylene Glycol	26.
Ethylene Glycol Dinitrate	0.1
Ethylidene-2-norbornene, 5-	7.
Ethyl Mercaptan	0.08
Ethyl Sulfide	1.6
Glycolonitrile	5.
Halothane	16
Heptane	350.
Hexanediamine, 1,6-	0.32

Compound	Limit (L) Milligrams Per Cubic Meter
Hydrogen Chloride	1.
Hydrogen Fluoride	0.5
Hydrogen Sulfide	1.1
Isoamyl Acetate	133.
Isoamyl Alcohol	15.
Isobutyronitrile	22.
Kepone	0.001
Kerosene	100.
Malononitrile	8.
Mesityl Oxide	40.
Methyl Acrylate	5.8
Methyl Amyl Ketone	9.4
Methyl-t-butyl ether	45.
Methyl Butyl Ketone	4.
Methyl Disulfide	2.2
Methylenebis (2-chloroaniline((MOCA)	0.003
Methylene Chloride	26.
Methyl Isoamyl Ketone	5.6
Methyl Mercaptan	0.2
Methyl Methacrylate	34.
Methyl Propyl Ketone	530.
Methyl Sulfide	0.3
Mineral Spirits	350.
Naphtha	350.
Nickel, Inorganic Compounds	0.015

Compound	Limit (L) Milligrams Per Cubic Meter
Nitroglycerine	0.1
Nitropropane	5.
Octane	350.
Parathion	0.05
Pentane	350.
Perchloroethylene	33.5
Petroleum Ether	350
Phenyl Mercaptan	0.4
Propionitrile	14.
Propyl Acetate	62.6
Propylene Oxide	20.
Propyl Mercaptan	0.23
Silica-amorphous- precipitated, silica gel	4.
Silicon Carbide	4.
Stoddard Solvent	350.
Styrene	21.
Succinonitrile	20.
Tolidine	0.02
Trichloroethylene	135.
Trimethylamine	0.1
Valeric Acid	0.34
Vinyl Acetate	15.
Vinyl Chloride	2.

[NOTE: The time weighted average (TWA) Threshold Limit Value (TLV) published by the American Conference of Governmental Industrial Hygienists (ACGIH), in its TLVs and BEIs guide (1997 Edition) shall be used for compounds not included in the table. The Short Term Exposure Level

(STEL) or Ceiling Limit (annotated with a "C") published by the ACGIH shall be used for compounds that do not have a published TWA TLV. This section cannot be used if the compound is not listed in the table or does not have a published TWA TLV, STEL, or Ceiling Limit in the ACGIH TLVs and BEIs guide.]

[(3) Notification must be provided using Form PI-7 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, and data identifying specific chemical names, L values, D values, and a description of pollution control equipment, if any.]

[(4) The facilities in which the following chemicals will be handled shall be located at least 300 feet from the nearest property line and 600 feet from any off-plant receptor and the cumulative amount of any of the following chemicals resulting from one or more authorizations under this section (but not including permit authorizations) shall not exceed 500 pounds on the plant property and all listed chemicals shall be handled only in unheated containers operated in compliance with the United States Department of Transportation regulations (49 Code of Federal Regulations, Parts 171-178): acrolein, allyl chloride, ammonia (anhydrous), arsine, boron trifluoride, bromine, carbon disulfide, chlorine, chlorine dioxide, chlorine trifluoride, chloroacetaldehyde, chloropicrin, chloroprene, diazomethane, diborane, diglycidyl ether, dimethylhydrazine, ethyleneimine, ethyl mercaptan, fluorine, formaldehyde (anhydrous), hydrogen bromide, hydrogen chloride, hydrogen cyanide, hydrogen fluoride, hydrogen selenide, hydrogen sulfide, ketene, methylamine, methyl bromide, methyl hydrazine, methyl isocyanate, methyl mercaptan, nickel carbonyl, nitric acid, nitric oxide, nitrogen dioxide, oxygen difluoride, ozone, pentaborane, perchloromethyl mercaptan, perchloryl fluoride, phosgene, phosphine, phosphorus trichloride, selenium hexafluoride, stibine,

liquified sulfur dioxide, sulfur pentafluoride, and tellurium hexafluoride. Containers of these chemicals may not be vented or opened directly to the atmosphere at any time.]

[(5) For physical changes or modifications to existing facilities, there shall be no changes or additions of air pollution abatement equipment.]

[(6) Visible emissions, except uncombined water, to the atmosphere from any point or fugitive source shall not exceed 5.0% opacity in any six-minute period.]

[(b) The following are not authorized under this section except as noted in subsection (c) of this section:]

[(1) construction of a facility authorized in another section of this chapter or for which a standard permit is in effect; and]

[(2) any change to any facility authorized under another section of this chapter or authorized under a standard permit.]

[(c) If a facility has been authorized under another section of this chapter or under a standard permit, subsection (a)(2) and (3) of this section may be used to qualify the use of other chemicals at the facility.]

[§106.263. Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities.]

[(a) This section authorizes routine maintenance, start-up and shutdown of facilities, and specific temporary maintenance facilities except as specified in subsection (b) of this section.]

[(b) The following are not authorized under this section:]

[(1) construction of any new or modified permanent facility;]

[(2) reconstruction under 40 Code of Federal Regulations, Part 60, New Source Performance Standards, Subpart A, §60.15 (relating to Reconstruction);]

[(3) physical or operational changes to a facility which increase capacity or production beyond previously existing performance levels or results in the emission of a new air contaminant;]

[(4) facilities and sources that are de minimis as allowed in §116.119 of this title (relating to De Minimis Facilities or Sources);]

[(5) piping fugitive emissions authorized under a permit or another permit by rule; and]

[(6) any emissions associated with operations claimed under the following sections of this chapter:]

[(A) §106.231 of this title (relating to Manufacturing, Refinishing, and Restoring Wood Products);]

[(B) §106.351 of this title (relating to Salt Water Disposal (Petroleum));]

[(C) §106.352 of this title (relating to Oil and Gas Production Facilities);]

[(D) §106.353 of this title (relating to Temporary Oil and Gas Facilities);]

[(E) §106.355 of this title (relating to Pipeline Metering, Purging, and Maintenance);]

[(F) §106.392 of this title (relating to Thermoset Resin Facilities);]

[(G) §106.418 of this title (relating to Printing Presses);]

[(H) §106.433 of this title (relating to Surface Coat Facility);]

[(I) §106.435 of this title (relating to Classic or Antique Automobile Restoration Facility);]

[(J) §106.436 of this title (relating to Auto Body Refinishing Facility); and]

[(K) §106.512 of this title (relating to Stationary Engines and Turbines).]

[(c) The following activities and facilities are authorized under this section:]

[(1) routine maintenance activities which are those that are planned and predictable and ensure the continuous normal operation of a facility or control device or return a facility or control device to normal operating conditions;]

[(2) routine start-ups and shutdowns which are those that are planned and predictable; and]

[(3) temporary maintenance facilities which are constructed in conjunction with maintenance activities. Temporary maintenance facilities include only the following:]

[(A) facilities used for abrasive blasting, surface preparation, and surface coating on immovable fixed structures;]

[(B) facilities used for testing and repair of engines and turbines;]

[(C) compressors, pumps, or engines and associated pipes, valves, flanges, and connections, not operating as a replacement for an existing authorized unit;]

[(D) flares, vapor combustors, catalytic oxidizers, thermal oxidizers, carbon adsorption units, and other control devices used to control vent gases released during the degassing of immovable, fixed process vessels, storage vessels, and associated piping to atmospheric pressure, plus cleaning apparatus that will have or cause emissions;]

[(E) temporary piping required to bypass a unit or pipeline section undergoing maintenance; and]

[(F) liquid or gas-fired vaporizers used for the purpose of vaporizing inert gas.]

[(d) Emissions from routine maintenance (excluding temporary maintenance facilities), start-up, and shutdown are:]

[(1) limited to 24-hour emission totals which are less than the reportable quantities defined in §101.1(82) of this title (relating to Definitions) for individual occurrences;]

[(2) required to be authorized under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or comply with §101.7 and §101.11 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements, and Demonstrations) if unable to comply with paragraph (1) of this subsection or subsection (f) of this section; and]

[(3) required to comply with subsection (f) of this section.]

[(e) In addition to the emission limits in subsection (f) of this section, specific temporary maintenance facilities as listed in subsection (c)(3) of this section must meet the following additional requirements:]

[(1) flares or vapor combustors must meet the requirements of §106.492(1) and (2)(C) of this title (relating to Flares);]

[(2) catalytic oxidizers must meet the requirements of §106.533(5)(C) of this title (relating to Water and Soil Remediation);]

[(3) thermal oxidizers must meet the requirements of §106.493(2) and (3) of this title (relating to Direct Flame Incinerators);]

[(4) carbon adsorption systems must meet the requirements of §106.533(5)(D) of this title;]

[(5) other control devices used to control vents caused by the degassing of process vessels, storage vessels, and associated piping must have an overall vapor collection and destruction or removal efficiency of at least 90%;]

[(6) any temporary maintenance facility that cannot meet all applicable limitations of this section must obtain authorization under Chapter 116 of this title; and]

[(7) temporary maintenance facilities may not operate at a given location for longer than 180 consecutive days or the completion of a single project unless the facility is registered. If a single project requires more than 180 consecutive days to complete, the facilities must be registered using a PI-7 Form, along with documentation on the project. Registration and supporting documentation shall be submitted upon determining the length of the project will exceed 180 days, but no later than 180 days after the project begins.]

[(f) All emissions covered by this section are limited to, collectively and cumulatively, less than any applicable emission limit under §106.4(a)(1) - (3) of this title (relating to Requirements for Permitting by Rule) in any rolling 12-month period.]

[(g) Facility owners or operators must retain records containing sufficient information to demonstrate compliance with this section and must include information listed in paragraphs (1) - (4) of this subsection. Documentation must be separate and distinct from records maintained for any other air authorization. Records must identify the following for all maintenance, start-up, or shutdown activities and temporary maintenance facilities:]

[(1) the type and reason for the activity or facility construction;]

[(2) the processes and equipment involved;]

[(3) the date, time, and duration of the activity or facility operation; and]

[(4) the air contaminants and amounts which are emitted as a result of the activity or facility operation.]

SUBCHAPTER K: GENERAL

§§106.261, 106.263, 106.268, 106.269

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; and §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities.

The adopted new sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, and 382.05196.

§106.261. New Facilities and Changes to Authorized Facilities.

(a) Except as specified under subsection (c) of this section, a facility, group of facilities, related emissions increases ~~emission increase~~, or physical or operational ~~physical/operational~~ changes to existing authorized facilities are permitted by rule provided that all of the following conditions of this section are satisfied.

(1) For all uses of Table 1 ~~I, located insubparagraph (K) of this paragraph,~~of this section associated with paragraph ~~subparagraphs~~ (5)(A) - ~~(I)~~(H) of this subsection ~~paragraph~~, the distance ~~"distance to property line or receptor"~~ must be the distance in feet from the closest emission point to the nearest property line.

(2) For all uses of Table ~~I~~ of this section associated with paragraph (5)(J) of this subsection, ~~subparagraph (K) of this paragraph,~~ the distance ~~"distance to property line or receptor"~~ must be the distance in feet, at the time of the claim or registration, from the ~~closest~~ emission point to the closest point on the nearest recreational area, ~~or~~ residence ~~or other structure~~ not occupied or used solely by the owner or operator of the facilities or the owner of the property upon which the facilities are located, school, or place of worship. ~~In the case of multiple emission points, use the closest distance to the property line, or receptor, as applicable.~~

(3) For paragraph ~~subparagraphs~~ (5)(A) - ~~(I)~~ (H) and ~~(K)~~ (J) of this subsection ~~paragraph~~, there is a minimum distance requirement of ~~100~~ 25 feet to either the property line or to the

nearest off-property receptor, unless otherwise noted in Table 1 of this section. ~~There shall be no interpolation~~ Linear interpolation is allowed between height and distance points on Table 1 of this section. ~~in determining the distance to property line, distance to receptor, or stack height; the next lowest distance or stack height value must be used.~~

(4) For a claim with numerous emission points, calculate the weight fraction of emissions at each emission point and multiply by the E value calculated from Table 1 of this section for the compound at that point.

(5) For all of the following, E is the maximum allowable emission rate in pounds per hour (lb/hr) and X is the value derived from Table 1 ~~I~~ of this section in micrograms per cubic meter ($\mu g/m^3$) per lb/hr~~, located in subparagraph (L) (K) of this paragraph~~, based on facility-specific parameters:

~~(A) for total suspended particulates with a short-term effects screening level of 50 micrograms per cubic meter ($\mu g/m^3$) or greater, not more than E as determined using the equation E = 400/X;~~

~~(B)~~ (A) for particulate matter with a diameter of 10 microns or less (PM_{10}) not more than E as determined using the equation E = 150/X;

~~(C)~~ (B) for sulfur dioxide, not more than E as determined using the equation E = 365/X;

~~(D)~~ (C) for carbon monoxide, not more than E as determined using the equation E = 10,000/X;

~~(E)~~ (D) for oxides of nitrogen, not more than E as determined using the equation E = 1,000/X;

(E) ~~(F)~~ for ozone, not more than E as determined using the equation E = 155/X;

(F) ~~(G)~~ for hydrogen sulfide, not more than E as determined using the equation E = 108/X;

(G) ~~(H)~~ for sulfuric acid fume or mist, not more than E as determined using the equation E = 15/X;

(H) ~~(I)~~ for lead, not more than E as determined by the equation E = 1.5/X;

(I) ~~(J)~~ for facilities that handle agricultural products, as specified in Texas Health and Safety Code, §382.020, which emit cellulose fiber, no more than the emission rate

specified in §111.171 of this title (relating to Emissions Limits Based on Process Weight Method), not to exceed 10 pounds per hour; and

(J) ~~(K)~~ for all other air contaminants, not more than E as determined using the equation E = ESL/X where the ESL is the short-term effects screening level (ESL) ~~effects screening level~~ of the contaminant in µg/m^3 as published in the commission's Effects Screening Levels List in effect at the time of the claim. For air contaminants without a published ESL, contact the Toxicology Section of the Texas Commission on Environmental Quality to request an ESL or a default short-term emission rate of 0.04 lb/hr may be used.

Figure: 30 TAC §106.261(a)(1)(J) ~~§106.261(a)(1)(K)~~

~~Table I~~

~~Distance to property line or receptor~~	~~Stack Height~~			
	~~3' *~~	~~10'~~	~~20'~~	~~30'~~
~~100'~~	~~9822~~	~~1350~~	~~1300~~	~~1250~~
~~200~~	~~4790~~	~~1108~~	~~970~~	~~960~~
~~300~~	~~2645~~	~~1070~~	~~750~~	~~710~~
~~400~~	~~1675~~	~~951~~	~~610~~	~~540~~
~~500~~	~~1161~~	~~784~~	~~450~~	~~440~~
~~600~~	~~857~~	~~640~~	~~420~~	~~370~~
~~700~~	~~662~~	~~527~~	~~410~~	~~320~~
~~800~~	~~530~~	~~440~~	~~400~~	~~290~~
~~900~~	~~435~~	~~400~~	~~380~~	~~260~~
~~1000~~	~~365~~	~~355~~	~~350~~	~~230~~
~~1500~~	~~310~~	~~290~~	~~230~~	~~160~~
~~2000~~	~~190~~	~~180~~	~~160~~	~~120~~
~~3000~~	~~100~~	~~95~~	~~90~~	~~80~~

Table 1.

X-Values for Non-Downwashed and Downwashed Emission Points in $\mu g/m^3$ per lb/hr

Distance (feet)	Stack Height						
	3'*	10'	20'	30'	40'	50'	60'
25	28900	**	**	**	**	**	**
50	17865	**	**	**	**	**	**
75	17665	**	**	**	**	**	**
100	9820	1350	1300	1250	540	320	120
200	4790	1110	970	960	540	320	120

300	2645	1070	750	710	440	290	120
400	1675	950	610	540	350	250	100
500	1160	785	450	440	290	210	90
600	860	640	420	370	250	180	85
700	660	530	410	320	220	150	80
800	530	440	400	290	190	140	70
900	435	400	380	260	170	120	70
1000	365	355	350	230	160	110	65
1500	310	290	230	160	110	80	50
2000	190	180	160	120	80	60	40
3000	100	95	90	80	60	40	30

* The “3 foot” stack height column should be used for all ground-level fugitive or point source releases.

** A minimum distance of 100 feet is required for these areas.

(6) ~~(2)~~ In addition to the short-term limit specified in paragraph (5)(J) ~~(1)(K)~~ of this subsection, emissions of benzene or ethylene dichloride may not exceed 1 ~~one~~ ton per year ~~and emissions of hydrogen chloride may not exceed one-half ton per year~~.

(7) ~~(3)~~ When other permits by rule (PBR) are included with this PBR ~~in a claim~~, all emissions must meet the applicable ~~emission~~ emissions limits of this section, including emissions from all proposed facilities and all related ~~emission~~ emissions increases upstream and downstream of the facilities to be authorized under the PBR(s)~~.~~. This requirement is in addition to meeting the applicable requirements for construction and operation in each individual PBR involved in the claim of this PBR.

~~(4) Facilities that have on site, at any time, any chemical identified in Table H, located in this paragraph, in quantities greater than the specified threshold levels, shall not be authorized under this section, unless those chemicals have been authorized by a case-by-case new source review permit.~~

~~Figure: 30 TAC §106.261(a)(4)~~

~~Table H~~

~~Contaminant~~	~~**CAS #**~~	~~**Threshold (lb)**~~
~~Acrolein {2-Propenal}~~	~~107-02-8~~	~~5,000~~
~~Acrylonitrile {2-Propenenitrile}~~	~~107-13-1~~	~~20,000~~
~~Acrylyl chloride {2-Propenoyl chloride}~~	~~814-68-6~~	~~5,000~~
~~Allyl alcohol {2-Propen-1-ol}~~	~~107-18-61~~	~~15,000~~
~~Allylamine {2-Propen-1-amine}~~	~~107-11-9~~	~~10,000~~
~~Allyl chloride~~	~~107-05-1~~	~~5,000~~
~~Ammonia (anhydrous)~~	~~7664-41-7~~	~~10,000~~
~~Ammonia (conc 20% or greater)~~	~~7664-41-7~~	~~20,000~~
~~Arsenous trichloride~~	~~7784-34-1~~	~~15,000~~
~~Arsine~~	~~7784-42-1~~	~~1,000~~
~~Boron trichloride {Borane, trichloro-}~~	~~10294-34-5~~	~~5,000~~
~~Boron trifluoride {Borane, trifluoro-}~~	~~7637-07-2~~	~~5,000~~
~~Boron trifluoride compound with methyl ether (1:1) {Boron, trifluoro {oxybis (methane)}},-T-4.~~	~~353-42-4~~	~~15,000~~
~~Bromine~~	~~7726-95-6~~	~~10,000~~
~~Carbon disulfide~~	~~75-15-0~~	~~20,000~~
~~Chlorine~~	~~7782-50-5~~	~~2,500~~
~~Chlorine dioxide {Chlorine oxide (ClO2)}~~	~~10049-04-4~~	~~1,000~~
~~Chlorine trifluoride~~	~~7790-91-2~~	~~1,000~~

~~Contaminant~~	~~**CAS #**~~	~~**Threshold (lb)**~~
~~Chloroform {Methane, trichloro-}~~	~~67-66-3~~	~~20,000~~
~~Chloromethyl ether {Methane, oxybis {chloro-}}~~	~~542-88-1~~	~~1,000~~
~~Chloromethyl methyl ether {Methane, chloromethoxy-}~~	~~107-30-2~~	~~5,000~~
~~Chloroprene~~	~~126-99-8~~	~~5,000~~
~~Crotonaldehyde {2-Butenal}~~	~~4170-30-3~~	~~20,000~~
~~Crotonaldehyde, (E)- {2-Butenal, (E)-}~~	~~123-73-9~~	~~20,000~~
~~Cyanogen chloride~~	~~506-77-4~~	~~10,000~~
~~Cyclohexylamine {Cyclohexanamine}~~	~~108-91-8~~	~~15,000~~
~~Diazomethane~~	~~334-88-3~~	~~1,000~~
~~Diborane~~	~~19287-45-7~~	~~2,500~~
~~Dimethyldichlorosilane {Silane, dichlorodimethyl-}~~	~~75-78-5~~	~~5,000~~
~~1,1-Dimethylhydrazine {Hydrazine, 1,1-dimethyl-}~~	~~57-14-7~~	~~15,000~~
~~Epichlorohydrin {Oxirane,(chloromethyl)-}~~	~~106-89-8~~	~~20,000~~
~~Ethylenediamine {1,2-Ethanediamine}~~	~~107-15-3~~	~~20,000~~
~~Ethylenemine {Aziridine}~~	~~151-56-4~~	~~10,000~~
~~Ethylene oxide {Oxirane}~~	~~75-21-8~~	~~10,000~~
~~Ethyl mercaptan~~	~~75-08-1~~	~~1,000~~
~~Fluorine~~	~~7782-41-4~~	~~1,000~~
~~Formaldehyde (solution)~~	~~50-00-0~~	~~15,000~~
~~Furan~~	~~110-00-9~~	~~5,000~~
~~Hydrazine~~	~~302-01-2~~	~~15,000~~
~~Hydrochloric acid (conc 37% or greater)~~	~~7647-01-0~~	~~15,000~~
~~Hydrocyanic acid~~	~~74-90-8~~	~~2,500~~
~~Hydrogen bromide~~	~~10035-10-6~~	~~5,000~~
~~Hydrogen chloride (anhydrous) {Hydrochloric acid}~~	~~7647-01-0~~	~~5,000~~

~~Contaminant~~	~~**CAS #**~~	~~**Threshold (lb)**~~
~~Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater) {Hydrofluoric acid}~~	~~7664-39-3~~	~~1,000~~
~~Hydrogen selenide~~	~~7783-07-5~~	~~500~~
~~Hydrogen sulfide~~	~~7783-06-4~~	~~10,000~~
~~Iron, pentacarbonyl- {Iron carbonyl(Fe(CO)5),11)-}~~	~~13463-40-6~~	~~2,500~~
~~Isobutyronitrile {Propanenitrile, 2-methyl-}~~	~~78-82-0~~	~~20,000~~
~~Isopropyl chloroformate {Carbonochloridic acid, 1-methylethyl ester}~~	~~108-23-6~~	~~15,000~~
~~Methacrylonitrile {2-Propenenitrile, 2-methyl-}~~	~~126-98-7~~	~~10,000~~
~~Methyl amine~~	~~74-89-5~~	~~5,000~~
~~Methyl bromide~~	~~74-83-9~~	~~1,000~~
~~Methyl chloroformate {Carbonochloridic acid, methylester}~~	~~79-22-1~~	~~5,000~~
~~Methyl hydrazine {Hydrazine, methyl-}~~	~~60-34-4~~	~~15,000~~
~~Methyl isocyanate {Methane, isocyanato-}~~	~~624-83-9~~	~~10,000~~
~~Methyl mercaptan {Methanethiol}~~	~~74-93-1~~	~~10,000~~
~~Methylthiocyanate {Thiocyanicacid, methyl ester}~~	~~556-64-9~~	~~20,000~~
~~Methyltrichlorosilane {Silane, trichloromethyl-}~~	~~75-79-6~~	~~5,000~~
~~Nickel carbonyl~~	~~13463-39-3~~	~~1,000~~
~~Nitric acid (conc 80% or greater)~~	~~7697-37-2~~	~~15,000~~
~~Nitrogen dioxide~~	~~10102-44-0~~	~~5,000~~
~~Nitric oxide {Nitrogen oxide (NO)}~~	~~10102-43-9~~	~~10,000~~
~~Oleum (Fuming Sulfuric acid) {Sulfuric acid, mixture with sulfur trioxide}~~	~~8014-95-7~~	~~10,000~~
~~Oxygen difluoride~~	~~7783-41-7~~	~~1,000~~
~~Ozone~~	~~10028-15-6~~	~~1,000~~
~~Pentaborane~~	~~19624-22-7~~	~~10,000~~
~~Peracetic acid {Ethaneperoxoic acid}~~	~~79-21-0~~	~~10,000~~

~~Contaminant~~	~~**CAS #**~~	~~**Threshold (lb)**~~
~~Perchloryl fluoride~~	~~7616-94-6~~	~~2,000~~
~~Perchloromethylmercaptan {Methanesulfenyl chloride, trichloro-}~~	~~594-42-3~~	~~10,000~~
~~Phosgene {Carbonic dichloride}~~	~~75-44-5~~	~~500~~
~~Phosphine~~	~~7803-51-2~~	~~5,000~~
~~Phosphorus oxychloride {Phosphoryl chloride}~~	~~10025-87-3~~	~~5,000~~
~~Phosphorus tri- (TB-chloride) {Phos-5-phorous tri-Isobutyronitrile chloride}~~	~~7719-12-2~~	~~15,000~~
~~Piperidine~~	~~110-89-4~~	~~15,000~~
~~Propionitrile {Propanenitrile}~~	~~107-12-0~~	~~10,000~~
~~Propyl chloroformate {Carbonochloridic acid, propylester}~~	~~109-61-5~~	~~15,000~~
~~Propyleneimine {Aziridine, 2-methyl-}~~	~~75-55-8~~	~~10,000~~
~~Propylene oxide {Oxirane, methyl-}~~	~~75-56-9~~	~~10,000~~
~~Selenium hexafluoride~~	~~7783-79-1~~	~~1,000~~
~~Stibine~~	~~7803-52-3~~	~~1,000~~
~~Sulfur dioxide (anhydrous)~~	~~7446-09-5~~	~~5,000~~
~~Sulfur pentafluoide~~	~~5714-22-7~~	~~1,000~~
~~Sulfur tetrafluoride {Sulfur fluoride (SF4), (T-4)-}~~	~~7783-60-0~~	~~2,500~~
~~Sulfur trioxide~~	~~7446-11-9~~	~~10,000~~
~~Tellurium hexafluoride~~	~~7783-80-4~~	~~1,000~~
~~Tetramethyllead {Plumbane, tetramethyl-}~~	~~75-74-1~~	~~10,000~~
~~Tetranitromethane {Methane, tetranitro-}~~	~~509-14-8~~	~~10,000~~
~~Titanium tetrachloride {Titanium chloride (TiCl4) (T-4)-}~~	~~7550-45-0~~	~~2,500~~
~~Trimethylchlorosilane {Silane, chlorotrimethyl-}~~	~~75-77-4~~	~~10,000~~
~~Vinyl acetate monomer {Acetic acid ethenyl ester}~~	~~108-05-4~~	~~15,000~~

(8) ~~(5)~~ Visible emissions, except uncombined water, to the atmosphere from any point or fugitive source shall not leave the site for a period exceeding 30 seconds in any six-minute period as determined by United States Environmental Protection Agency (EPA) Test Method 22, found in 40 Code of Federal Regulations Part 60, Appendix A.

(9) ~~(6)~~ Additions of, ~~or changes to~~, pollution control equipment or methods associated with facilities authorized by this section shall meet, at a minimum, the requirements of a qualified facility as defined in ~~§116.10(12)(E)(ii)~~ §116.10(12)(E)(ii) of this title (relating to General Definitions).

(b) Facilities authorized by this section are subject to the following ~~notification,~~ certification~~,~~ and registration requirements.

(1) For emission ~~Emissions~~ increases of less than 5 tons per year of any air contaminant ~~will be noticed or certified according to subparagraphs (A) and (B) of this paragraph:~~

~~(A) submit notification to the appropriate regional office and the Air Permits Division within ten days of construction or operational change of the facility; and~~

~~(B) for~~ at any major source as defined by §122.10(13) of this title (relating to General Definitions), submit certification, using the required form, to the Air Permits Division, appropriate commission regional office, and any local air pollution control agency having jurisdiction, summarizing all uses of this PBR under this paragraph in the previous calendar year, by March 31 of

the following year, or on the same date that the emissions inventory is due ~~summarizing all uses of this PBR under this paragraph in the previous calendar year~~. Applicants may voluntarily submit a registration for individual claims under this paragraph. Review of these registrations will be done at the discretion of the Air Permits Division director.

(2) For emission increases of 5 tons per year or greater of any air contaminant, applicants shall submit a registration using the required form to the Air Permits Division, appropriate commission regional office, and any local air pollution control agency having jurisdiction, within ten days of the beginning of actual construction as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) or operational change of the facility. Any major source, as defined by §122.10(13) of this title, must also certify all uses of this PBR under this paragraph, using the required form, to the Air Permits Division, appropriate commission regional office, and any local air pollution control agency having jurisdiction ~~following the installation of, or changes to, the facilities.~~

(3) Additions of pollution control equipment or methods require submission of notification, using the required form, to ~~the appropriate regional office and~~ the Air Permits Division, appropriate commission regional office, and any local air pollution control agency having jurisdiction within ten days of the beginning of actual construction as defined in §116.12 of this title or operational change of the facility ~~using the required form. Changes to existing pollution control equipment including changes to the inlet stream(s) must be registered prior to construction of the facility or the control equipment.~~ Applicants may voluntarily submit a registration for individual claims under this

paragraph. Review of these registrations will be done at the discretion of the Air Permits Division director.

(c) The following are not authorized under this section except for the addition of other air contaminants not addressed in an existing authorization:

(1) construction of a facility for which there is another applicable section of this chapter or for which a standard permit is in effect;

(2) any change to any facility for which there is another applicable section of this chapter or which is authorized under a standard permit; ~~and~~

(3) emissions resulting from maintenance, startup, shutdown, or quantifiable, anticipated (QUAN) emission releases unless part of a specific project otherwise authorized under this section~~.~~ ; and

(4) any change to existing pollution control equipment.

§106.263. Temporary Maintenance Facilities.

(a) This section authorizes specific temporary maintenance facilities except as specified in subsection (b) of this section.

(b) The following are not authorized under this section:

(1) construction of, or changes to, any permanent facility;

(2) reconstruction under 40 Code of Federal Regulations §60.15 (concerning Reconstruction); or

(3) physical or operational changes to a facility that increase capacity or production beyond previously existing performance levels or result in the emission of a new air contaminant.

(c) Temporary maintenance facilities include only the following:

(1) facilities used for abrasive blasting, surface preparation, and surface coating on immovable fixed structures;

(2) facilities used for testing and repair of engines and turbines;

(3) compressors, pumps, or engines and associated pipes, valves, flanges, and connections used for maintenance activities and not operating as a replacement for an existing authorized unit;

(4) flares, vapor combustors, catalytic oxidizers, internal combustion engines, carbon adsorption units, and other control devices used to control vent gases released during the degassing of

immovable, fixed process vessels, storage vessels, and associated piping to atmospheric pressure, plus any cleaning apparatus that will have or cause emissions;

(5) temporary piping required to bypass a unit or pipeline section undergoing maintenance; and

(6) liquid or gas-fired vaporizers used for the purpose of vaporizing inert compounds.

(d) In addition to the emission limits in subsection (e) of this section, specific temporary maintenance facilities as listed in subsection (c) of this section must meet the following additional requirements.

(1) Any control device must meet the requirements of §106.533(g) of this title (relating to Remediation).

(2) Temporary maintenance facilities may not operate at a given location for longer than ~~180~~ 365 consecutive days.

(e) Any temporary maintenance facility that cannot meet all applicable limitations of this section must obtain authorization under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

§106.268. Maintenance, Startup, and Shutdown (MSS) Emissions ~~Emission Releases.~~

(a) This section authorizes emissions from maintenance, startup, or shutdown (MSS) activities, as defined in the definition of normal operations in §116.10 of this title (relating to General Definitions), that are ~~predictable or~~ planned at any authorized facility.

(b) This section may be used to authorize MSS emissions for an activity for which MSS emissions have already been authorized only if:

(1) notification is submitted within 30 days of claiming this section, using the required form, to the Air Permits Division, appropriate commission regional office, and any local air pollution control agency having jurisdiction; and

(2) the permit by rule is incorporated into a facility's permit or standard permit when next amended, renewed, or within two years of claiming this section, whichever is earliest.

(c) ~~(b)~~ The following are not authorized under this section:

(1) MSS associated with those facilities authorized under the permits by rule listed in §106.4(b) of this title (relating to Requirements for Permitting by Rule);

~~(2) MSS emissions from a facility that already has MSS emissions authorized;~~

(2) ~~(3)~~ construction of any new or modified permanent facility;

(3) ~~(4)~~ reconstruction of a facility under 40 Code of Federal Regulations §60.15 (concerning Reconstruction);

(4) ~~(5)~~ physical or operational changes to a facility that increase capacity or production beyond authorized performance levels ~~or result in the emission of a new air contaminant~~;

(5) ~~(6)~~ first-attempt repairs on piping fugitive emissions authorized by a new source review permit, standard permit, or another permit by rule; and

(6) ~~(7)~~ emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation, and maintenance consistent with good engineering practice.

(d) ~~(c)~~ Emission releases of any specific air contaminant must meet both the short-term emission~~s~~ limitations and annual emission limitations of §106.261 of this title (relating to New Facilities and Changes to Authorized Facilities).

(e) ~~(d)~~ The total of all site-wide annual MSS emissions claimed under this section plus the total of all emissions claimed ~~authorized~~ under §106.263 and §106.269 of this title (relating to Temporary Maintenance Facilities; and Quantifiable, Anticipated (QUAN) Emissions ~~Emission Releases~~) may not

exceed any applicable emission limit under §106.4(a)(1) - (3) of this title for any rolling 12-month period.

(f) ~~(e)~~ Facility owners or operators shall retain records containing sufficient information to demonstrate compliance with this section. Documentation must be separate and distinct from records maintained for any other air authorization (except §106.263 and §106.269 of this title). Records must identify the following:

(1) the type and reason for the activity or facility construction;

(2) the processes and equipment involved;

(3) the date, time, and duration of the activity or facility operation;

(4) the air contaminants and amounts that are emitted as a result of the activity or facility operation; and

(5) records to demonstrate compliance with any required monitoring.

§106.269. Quantifiable, Anticipated (QUAN) Emissions ~~Emission Releases.~~

(a) This section authorizes certain predictable but unscheduled quantifiable and anticipated (QUAN) emission releases. These releases do not include emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation, and maintenance consistent with good engineering practice ~~unscheduled but quantifiable and anticipated (QUAN) emissions releases as specified in the definition of normal operations in §116.10 of this title (relating to General Definitions) from any authorized facility~~.

(b) The following are not authorized under this section:

(1) additional emissions, if QUAN emissions from the facility are already authorized;

(2) construction of any new or modified permanent facility;

(3) reconstruction of a facility under 40 Code of Federal Regulations §60.15 (concerning Reconstruction);

(4) physical or operational changes to a facility that increase capacity or production beyond authorized performance levels or result in the emission of a new air contaminant;

(5) first-attempt repairs on piping fugitive emissions authorized by a new source review permit, standard permit, or another permit by rule; and

(6) emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation, and maintenance consistent with good engineering practice.

(c) Emission releases of any specific air contaminant must meet both the short-term emissions limitations and annual emission limitations of §106.261 of this title (relating to New Facilities and Changes to Authorized Facilities).

(d) The total of all site-wide annual QUAN emissions claimed under this section plus the total of all emissions claimed ~~authorized~~ under §106.263 and §106.268 of this title (relating to Temporary Maintenance Facilities; and Maintenance, Startup, and Shutdown (MSS) Emissions ~~Emission Releases~~) may not exceed any applicable emission limit under §106.4(a)(1) - (3) of this title (relating to Requirements for Permitting by Rule) for any rolling 12-month period.

~~(e) Total site-wide annual QUAN emissions must be less than 10% of all maximum allowable emissions rates authorized at the site for any rolling 12-month period.~~

(e) ~~(f)~~ Facility owners or operators shall retain records containing sufficient information to demonstrate compliance with this section. Documentation must be separate and distinct from records maintained for any other air authorization except §106.263 and §106.268 of this title. Records must identify the following:

(1) the type and reason for the activity or facility construction;

(2) the processes and equipment involved;

(3) the date, time, and duration of the activity or facility operation;

(4) the air contaminants and amounts that are emitted as a result of the activity or facility operation; and

(5) records to demonstrate compliance with any required monitoring.